

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OHIO
3 EASTERN DIVISION

4 IN RE: NATIONAL : MDL No. 2804
5 PRESCRIPTION OPIATE :
6 LITIGATION : Case No. 17-md-2804
7 APPLIES TO ALL CASES :
8 :
9 :
10 :
11 :- - - - -

12 HIGHLY CONFIDENTIAL

13 SUBJECT TO FURTHER CONFIDENTIALITY REVIEW

14 JANUARY 4, 2019
15 :- - - - -

16 VIDEOTAPED DEPOSITION OF ANTHONY MOLLICA,
17 taken pursuant to notice, was held at Marcus &
18 Shapira, One Oxford Center, 35th Floor, Pittsburgh,
19 Pennsylvania 15219, by and before Ann Medis,
20 Registered Professional Reporter and Notary Public in
21 and for the Commonwealth of Pennsylvania, on Friday,
22 January 4, 2019, commencing at 8:06 a.m.
23 :- - - - -

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1 A P P E A R A N C E S (Continued)

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1 P R O C E E D I N G S

2 - - - -

3 THE VIDEOGRAPHER: We are now on the

4 record. My name is Chris Ritona. I'm the

5 videographer for Golkow Litigation Services.

6 Today's date is January 4, 2019, and the time is

7 approximately 8:06 a.m.

8 This video deposition is being held in

9 Pittsburgh, PA at Marcus & Shapira, LLP, One

10 Oxford Centre, 35th Floor, in the matter of

11 National Prescription Opiate Litigation,

12 MDL No. 2804, Case No. 17-md-2804, United States

13 District Court, Northern District of Ohio, Eastern

14 Division.

15 The deponent today is Anthony Mollica. The

16 court reporter today is Ann Medis.

17 Will all counsel please identify themselves

18 for the record.

19 MR. HUDSON: Ty Hudson of Wagstaff &

20 Cartmell for plaintiffs.

21 MR. BARTON: Eric Barton, Wagstaff &

22 Cartmell, for plaintiffs.

23 MR. PAUL: Raj Paul, Covington &

24 Burling, on behalf of McKesson.

25 MS. BOURIAT: Jennifer Bouriat from

1 Pietragallo on behalf of Cardinal.

2 MR. BARNES: Robert Barnes on behalf of
3 HBC, Marcus & Shapira.

4 MR. KOBRIN: Josh Kobrin, Marcus &
5 Shapira, on behalf of HBC Services Company.

6 THE VIDEOGRAPHER: Ann, will you please
7 swear in the witness.

8 ANTHONY MOLLICA,
9 having been first duly sworn, was examined

10 and testified as follows:

11 THE VIDEOGRAPHER: You may proceed.

12 EXAMINATION

13 BY MR. HUDSON:

14 Q. Good morning, Mr. Mollica. My name is
15 Ty Hudson and I represent several of the
16 plaintiffs in this case.

17 Could you state your name for the record,
18 please.

19 A. Anthony Mollica.

20 Q. And what is your current address?

21 A. 9640 Portofino Drive, Brentwood,
22 Tennessee 37027.

23 Q. And you are a former employee of Giant
24 Eagle?

25 A. That's right.

1 Q. Giant Eagle owned HBC Service Company;
2 is that right?

3 A. Correct.

4 Q. And are you aware that HBC Service
5 Company is a defendant in this case?

6 A. I am.

7 Q. Are you represented by counsel here
8 today?

9 A. I am.

10 Q. And who is your attorney?

11 A. They're in the room, Marcus & Shapira.

12 Q. And are you paying for their services or
13 is HBC?

14 A. I don't know who's paying for the
15 services. Not me.

16 Q. Have you had your deposition taken
17 before?

18 A. No.

19 Q. Let's just make sure then we understand
20 how this process works before we get going. I'm
21 going to be asking you some questions, and then I
22 would ask that you provide answers unless your
23 counsel instructs you not to answer. Sometimes
24 they may object for the record, but unless you're
25 instructed not to answer, you agree to answer my

1 questions?

2 A. Okay.

3 Q. Second, do you understand that you are
4 under oath as if we were in a courtroom before a
5 judge and a jury?

6 A. I do.

7 Q. And is it fair that if you answer my
8 question, I'm going to assume that you understand
9 it. And the flip side of that is if you don't
10 understand my question, will you let me know so I
11 can clarify or rephrase it?

12 A. Yes.

13 Q. And then lastly, if you need to take a
14 break at any time, just let me know. We can go
15 off the record. All I would ask is if there's a
16 pending question you answer it. Is that fair?

17 A. Sure.

18 Q. What did you do to prepare for your
19 deposition today?

20 A. I came in, had some just general
21 procedural conversations about today yesterday
22 with my counsel.

23 Q. How long did those conversations last?

24 A. Four hours.

25 Q. Did you review any documents during the

1 conversations?

2 A. A brief familiarity with, you know, the
3 types of documents that we'll be discussing today.

4 Q. And did those documents refresh your
5 recollection?

6 A. That's hard to say.

7 MR. KOBRIN: I want to just quickly --
8 don't talk about anything that we discussed. All
9 of that is privileged. In general, if you can
10 answer his question "yes" or "no," that's fine.

11 THE WITNESS: There are some documents
12 that triggered memory, some of them. Most I've
13 never seen before.

14 BY MR. HUDSON:

15 Q. And do you understand that this
16 litigation relates to the opioid crisis?

17 A. That's my understanding.

18 Q. Is that a phrase that you've heard
19 before, the opioid crisis?

20 A. I've heard that phrase before on like TV
21 and that type of thing.

22 Q. How about in connection with your roles
23 or your role at Giant Eagle?

24 A. No. I never heard that as a phrase when
25 I was at Giant Eagle.

1 Q. How about the Controlled Substances Act,
2 was that something in your role at Giant Eagle
3 that you focused on?

4 A. As a pharmacist I'm familiar with the
5 Controlled Substances Act as it pertains to the
6 practice of retail pharmacy.

7 Q. How about more specifically at Giant
8 Eagle, was that something that you were involved
9 with, is compliance with the Controlled Substances
10 Act, you personally?

11 A. In the scope of what I oversaw at Giant
12 Eagle, compliance with the Controlled Substances
13 Act, yes.

14 Q. Let's, if we could, start with your
15 education. Could you just -- did you graduate
16 from the University of Pittsburgh with a Bachelor
17 of Science in Pharmacy?

18 A. Yes.

19 Q. And was that in 1995?

20 A. Yes.

21 Q. Any postgraduate work?

22 A. Yes. I have a -- I received an MBA from
23 the University of Waynesburg -- at that time it
24 was called Waynesburg College -- in 2003.

25 Q. And what did you do between the time

1 that you graduated from -- was it pharmacy school?

2 A. That's correct.

3 Q. -- between graduation from pharmacy
4 school and then starting your MBA?

5 A. What did I do specifically with Giant
6 Eagle or in general?

7 Q. No, in general.

8 A. I was a licensed pharmacist retail. I
9 moved up into regional supervisory positions and
10 eventually into -- I oversaw pharmacy operations,
11 retail operations for Giant Eagle; went on into
12 the specialty pharmacy markets for a company
13 called Omnicare CVS. And most recently, I'm
14 president of healthcare services for an
15 organization called Brookdale Senior Living.

16 Q. Let's break that down, if we could. So
17 you graduated from pharmacy school in 1995;
18 correct?

19 A. Correct.

20 Q. And then did you do your MBA while you
21 were still working, or did you go back to school
22 full time?

23 A. No. I did it while I was working. It
24 was a part-time program.

25 Q. If you could, after you graduated from

1 pharmacy school in 1995, what was the first job
2 that you had?

3 A. A staff pharmacist for Giant Eagle.

4 Q. And where were you located?

5 A. I believe my first -- I floated to many
6 locations. But I believe my first permanent like
7 one store role was in Waterworks in Pittsburgh.

8 Q. And how long did you remain in that
9 role?

10 A. As a staff pharmacist, I want to say
11 maybe a year and a half to two years. It's hard
12 to -- that's 25 years ago. One or two years.

13 Q. And then at some point, did you get
14 promoted?

15 A. I became a pharmacy manager, which is
16 more supervisory, over a single pharmacy.

17 Q. And that was sometime in the 1997, 1998
18 timeframe?

19 A. That's correct, right.

20 Q. How long did you remain in that role?

21 A. I remained in that role I'd say maybe a
22 year and a half. It could be two years. I'm
23 trying to remember those specifics dates.

24 Q. Sure. No, I understand. And then at
25 that point, what did you do after you were a

1 pharmacy manager?

2 A. I left Giant Eagle for a staffing
3 company called MedTech and then eventually for a
4 few months in one of the sites that they assigned
5 me to as a -- MedTech was a staffing company. So
6 they would send you in and fill in for pharmacists
7 where they had needs.

8 One of the companies they had me fill in for
9 offered me a position there. And then I stayed
10 there for probably about -- I'd say about maybe
11 four or five months. Then I came back to Giant
12 Eagle.

13 Q. And was that in 200- -- when was that?

14 A. I'm trying to think. I was there maybe
15 2000 to 2001. I think that's about right. Then I
16 came back to Giant Eagle in 2001.

17 Q. And then when you came back to Giant
18 Eagle, what was your role?

19 A. I was a floating pharmacist because at
20 that time, I had gone back to get my MBA and I
21 needed flexibility in the schedule. So they used
22 me as full time but as a fill-in pharmacist when
23 pharmacists were on vacation. I had multiple site
24 roles at that time.

25 Q. And how long did you stay in that role

1 as a floating pharmacist?

2 A. Until -- I want to say until 2003. 2003
3 I believe is when. Then I was promoted to a
4 pharmacy -- at that time they called it pharmacy
5 specialist, basically a regional supervisor.

6 Q. Is that different than a pharmacy
7 district leader?

8 A. Same. It's just vernacular difference
9 at the time.

10 Q. And then you were in the role as a
11 specialty pharmacist from 2003 to 2006?

12 A. Yeah, that sounds right.

13 Q. Then in March of 2006, were you promoted
14 to the VP of pharmacy operations?

15 A. No. I was in that role for I want to
16 say maybe a year. Then I went to Rite-Aid. I
17 spent maybe I think 90 days at Target. Target at
18 that time was opening up in the Pittsburgh market,
19 and they were looking to bring folks into -- groom
20 into their supervisory roles.

21 At the same time I got an offer from Rite-Aid
22 to be a -- same position for Rite-Aid, pharmacy
23 supervisory. I went there for 18 months. Then I
24 came back to Giant Eagle in 2006, I think spring
25 of 2006.

1 Q. And when you came back to Giant Eagle,
2 were you then the VP of pharmacy operations?

3 A. No, no. I came back in the same
4 position I left in, as a pharmacy supervisor.

5 Q. And why did you come back?

6 A. Giant Eagle was expanding its markets
7 into the Cleveland area through an acquisition.
8 They said that they needed help, stronger -- they
9 needed some strong leadership in terms of
10 assimilating a new -- a market like that. And it
11 sounded like a good opportunity for advancement to
12 come back.

13 Q. How long did you remain in the role as a
14 pharmacy supervisor for Giant Eagle in the
15 Cleveland market?

16 A. About eight months. And then I was
17 promoted to director of operations.

18 Q. And at that time, were you living in
19 Cleveland?

20 A. No, no. I lived in Pittsburgh. I just
21 commuted.

22 Q. How long did you remain director of
23 pharmacy operations?

24 A. Well, my -- I was -- my position as
25 director of pharmacy operations -- I had title

1 changes up to VP of operations. So until I left,
2 basically the same role, but as the Giant Eagle
3 continued to grow, they just retitled the position
4 senior director of operations and then eventually
5 vice-president of operations. But the basics of
6 the role were the same.

7 Q. And was that from March of 2006 --
8 excuse me -- February of 2006 to March of 2014?

9 A. No, no. Like I say, I became director
10 of operations I want to say very early on in 2007.
11 And then the gyrations of my role, the titles
12 changed, but the same basic position through March
13 of 2014.

14 Q. And if you could, when you became the
15 director of pharmacy operations in 2007, could you
16 just describe the organizational structure of
17 Giant Eagle?

18 A. Sure. Giant Eagle -- well, the grocery
19 part of Giant Eagle, I'm not as familiar with
20 their distribution centers and wholesale grocery
21 piece. I can talk -- speak more intelligently
22 about the grocery piece that I report into. Is
23 that what you're asking here?

24 Q. You mean the pharmacy piece?

25 A. Giant Eagle has a lot of -- Giant Eagle

1 ran distribution warehouses and lots of different
2 businesses. They had a real estate organization,
3 gas stations, lots of stuff. I'm familiar with
4 the basic structure of the grocery store chain of
5 which the pharmacy was part of.

6 Inside that structure was a basic structure
7 where there was a merchandising vertical and then
8 operations vertical. Merchandising included
9 things like sales drivers, marketing,
10 distribution, et cetera.

11 Operations was what happened inside of the
12 store. So inside of that structure pharmacy at
13 the time that I became director of operations, at
14 that specific time, because it changed later,
15 pharmacy was part of the merchandising part of
16 Giant Eagle in terms of the grocery store section.

17 Inside of that structure, inside of pharmacy
18 you had -- pharmacy I think was the only unique
19 one in which the operations of pharmacy reported
20 into the merchandising structure of pharmacy at
21 that time versus the overall company operation
22 structure. So I reported into a gentleman named
23 Randy Heiser who was VP of pharmacy.

24 Q. And who did Mr. Heiser report to?

25 A. I believe he reported to John Tedesco.

1 I don't recall what his title was at that time. I
2 don't recall what John's title was. I'm sure you
3 have that somewhere.

4 Q. So was there a CEO of Giant Eagle?

5 A. At that time David Shapira was the CEO.

6 Q. Was that the highest officer in the
7 company?

8 A. Yes.

9 Q. Just walk me through, if you could, the
10 structure from yourself to Mr. Heiser up through
11 to the CEO.

12 A. At that time what I believe, as I
13 recall -- I mean, I know who I reported to, was
14 Randy, but Randy reported to John Tedesco. John
15 Tedesco either reported to David directly or he
16 may have reported to John Lucot who was the chief
17 operating officer. I believe he reported to John
18 Lucot though.

19 Q. And as the director of pharmacy, what
20 were your roles and responsibilities?

21 A. Retail store operations. I would say
22 from the third line of the P & L down. It would
23 be cost controls, labor, hiring and firing, making
24 sure that you were following the regulatory
25 practices for the pharmacy and dispensing, those

1 type of things, doing our quality inspections,
2 accuracy of the prescriptions, basic P & L
3 responsibilities.

4 Operations then drive sales, meaning the
5 marketing, and the sales tactics and things like
6 that were part of the merchandising part of the
7 pharmacy department, but I ran what happens inside
8 the stores.

9 Q. And who reported to you as the director
10 of pharmacy?

11 A. The pharmacy, regional pharmacy
12 supervisors reported to me. And then eventually
13 as things progressed inside of the organization,
14 we added some quality managers for prescription
15 accuracy. So that reported to me. I'm trying to
16 think.

17 We had some trainers, technician training
18 program, that type of thing, that reported into my
19 org chart. That's basically my org chart, was as
20 the operations lead.

21 Q. At some point, did Joe Millward join as
22 the senior manager of compliance in pharmacy
23 quality?

24 A. Yeah. Joe Millward was our quality
25 person that I referred to.

1 Q. And did he report to you?

2 A. He reported to me.

3 Q. And his role as senior manager -- am I
4 correct he was senior manager of compliance and
5 pharmacy quality?

6 A. When we hired Joe, originally it was for
7 quality. And then the regulatory pieces started
8 to fall under the quality bucket, too. And his
9 role expanded in the time he was there. So it was
10 constantly evolving. There's a lot of hats you
11 wear in a company the size of Giant Eagle. So he
12 had a lot of different roles in terms of how he
13 added value to the organization.

14 And then Joe supported regulatory, not just
15 for the retail operations piece, but also for the
16 merchandising part of the organization, which
17 included, like I said, the sales designs, the
18 distribution centers and that type of thing.

19 Q. Do you have a recollection about at what
20 point Mr. Millward's position expanded from just
21 quality to quality and compliance?

22 A. No, no, no. I don't have recollection
23 of an exact day or something like that or when.
24 It was more evolving.

25 Q. How about what year?

1 A. I'd say within his first year as things
2 started to evolve.

3 Q. Would that be like 2010, 2011?

4 A. I don't recall when he was -- I'm trying
5 to think when he was brought on, because he was a
6 supervisor for us, pharmacy supervisor, before he
7 moved into that role. I don't recall the dates
8 when he was brought into that role.

9 Q. Did you know Mr. Millward prior to him
10 joining Giant Eagle?

11 A. Yes.

12 Q. How did you know him?

13 A. We went to college together. We had --
14 he also worked at Rite-Aid. He worked for
15 Rite-Aid when I was there, but we were in
16 different divisions. He was part of Rite-Aid.

17 Q. Was he a friend of yours in pharmacy
18 school?

19 A. Yes.

20 Q. Did you recruit him over to Giant Eagle?

21 A. I recruited him into Giant Eagle as a
22 pharmacy supervisor.

23 Q. Who made the decision to promote
24 Mr. Millward up to his position in quality and
25 then compliance?

1 MR. KOBRIN: Object to form.

2 THE WITNESS: We had a -- we had a CQI
3 committee, which was represented by multiple parts
4 of the organization that interviewed Joe and made
5 the recommendation for the role.

6 BY MR. HUDSON:

7 Q. What does CQI stand for?

8 A. Quality control initiative.

9 Q. And who was on that committee?

10 A. It was a combination of operators,
11 merchandisers, legal, both internal and external
12 counsel.

13 Q. Do you recall approximately how many
14 people were on that committee?

15 A. No. More than five, but I can't recall
16 the exact number.

17 Q. Am I correct that compliance within the
18 pharmacy portion of Giant Eagle fell under your
19 role as director of pharmacy?

20 MR. KOBRIN: Object to form.

21 THE WITNESS: The compliance --
22 compliance person who was running regulatory,
23 which is Joe, reported to me, but he had dotted
24 line responsibilities to parts of the business
25 that included retail operations, which I oversaw,

1 but also parts of the business that I didn't
2 touch.

3 BY MR. HUDSON:

4 Q. My question though was in terms of the
5 regulatory department for pharmacy operations,
6 where did that fall within the organization? Who
7 was responsible for that?

8 MR. KOBIN: Object to form.

9 THE WITNESS: I was responsible for the
10 pieces of regulatory that pertained to retail
11 pharmacy.

12 BY MR. HUDSON:

13 Q. How about the pieces that related to
14 distributors or HBC?

15 A. Yeah. That fell to other parts of the
16 org charts. That was Randy Heiser, Brett Merrell,
17 Greg Carlson. I didn't have any oversight over
18 any distribution areas.

19 Q. Randy Heiser, Brett Carlson?

20 A. Brett Merrell, Greg Carlson. There
21 could be supervisors at the warehouses. I wasn't
22 familiar with that part of the business.

23 Q. Did you ever visit the HBC warehouse?

24 A. I believe I did a generalized tour of
25 the overall warehouse one time, which I'm trying

1 to remember. There was a cage. They showed me
2 that, hey, you know, that's the HBC cage. But
3 I've never had a tour of the specific HBC
4 warehouses that pertained to pharmacy or for
5 pharmacy reasons.

6 Q. Do I understand you correctly then that
7 Mr. Millward, when he became the senior manager of
8 compliance, for lack of a better phrase, wore two
9 hats. In other words, one hat was dealing with
10 compliance issues relating to the retail
11 pharmacies and then another hat would be relating
12 to other compliance issues relating to other parts
13 of the business?

14 A. That's correct.

15 MR. KOBRIN: Object to form.

16 THE WITNESS: That's correct. In a
17 matrix organization, you can support multiple
18 areas. He reported to me more of an
19 organizational design. Someone has to do
20 performance appraisals and that type of thing. He
21 sat on my org chart, but he touched multiple areas
22 of the pharmacy, not just retail operations.

23 BY MR. HUDSON:

24 Q. And was one of the areas that he touched
25 or was responsible for was compliance as it

1 relates to HBC acting as a distributor of
2 controlled substances?

3 MR. KOBRIN: Object to form.

4 THE WITNESS: I can't say that for sure.

5 Greg Carlson, to my knowledge, was in charge of
6 the warehouse. But utilizing Joe as a resource
7 for things absolutely occurred, but to what
8 extent, I'm not -- I wasn't in that piece of the
9 business.

10 BY MR. HUDSON:

11 Q. Is it fair to say that the piece of the
12 business that you were responsible for was related
13 to retail pharmacies?

14 A. That's all my responsibility was. My
15 responsibility started at the front door of the
16 pharmacy and ended at the counter.

17 Q. And did that remain true from 2007 until
18 you left Giant Eagle?

19 A. Yes.

20 Q. Were you aware at some point that HBC
21 became a licensed distributor of controlled
22 substances?

23 A. Yes.

24 Q. Were you aware of which types of
25 controlled substances or schedule drugs HBC was

1 acting as a distributor for?

2 A. General awareness. I wasn't intimate
3 with the specific formularies of the warehouse,
4 but general awareness, yes.

5 Q. And what was your general understanding?

6 A. That they had an assortment of Schedules
7 III through V in addition to -- but the majority
8 of what they had there was nonscheduled drugs.

9 Q. And what was your understanding of who
10 acted as the distributor for Schedule II drugs?

11 A. McKesson.

12 Q. Did you have any interaction with
13 McKesson in your role?

14 A. Business interactions were more I was
15 part of Giant Eagle. So I'd see McKesson maybe
16 for dinner once a year at NACDS and sit in maybe
17 when they gave an annual report of the
18 relationship of the business, but I didn't have
19 direct business relationships with McKesson.

20 Q. Do you have any knowledge of McKesson's
21 controls or procedures as it relates to complying
22 with the Controlled Substances Act?

23 A. No, no. I'm not in that part of the
24 business.

25 Q. How about for HBC, do you have any

1 knowledge about policies or procedures that HBC
2 had in place to comply with the Controlled
3 Substances Act?

4 A. No.

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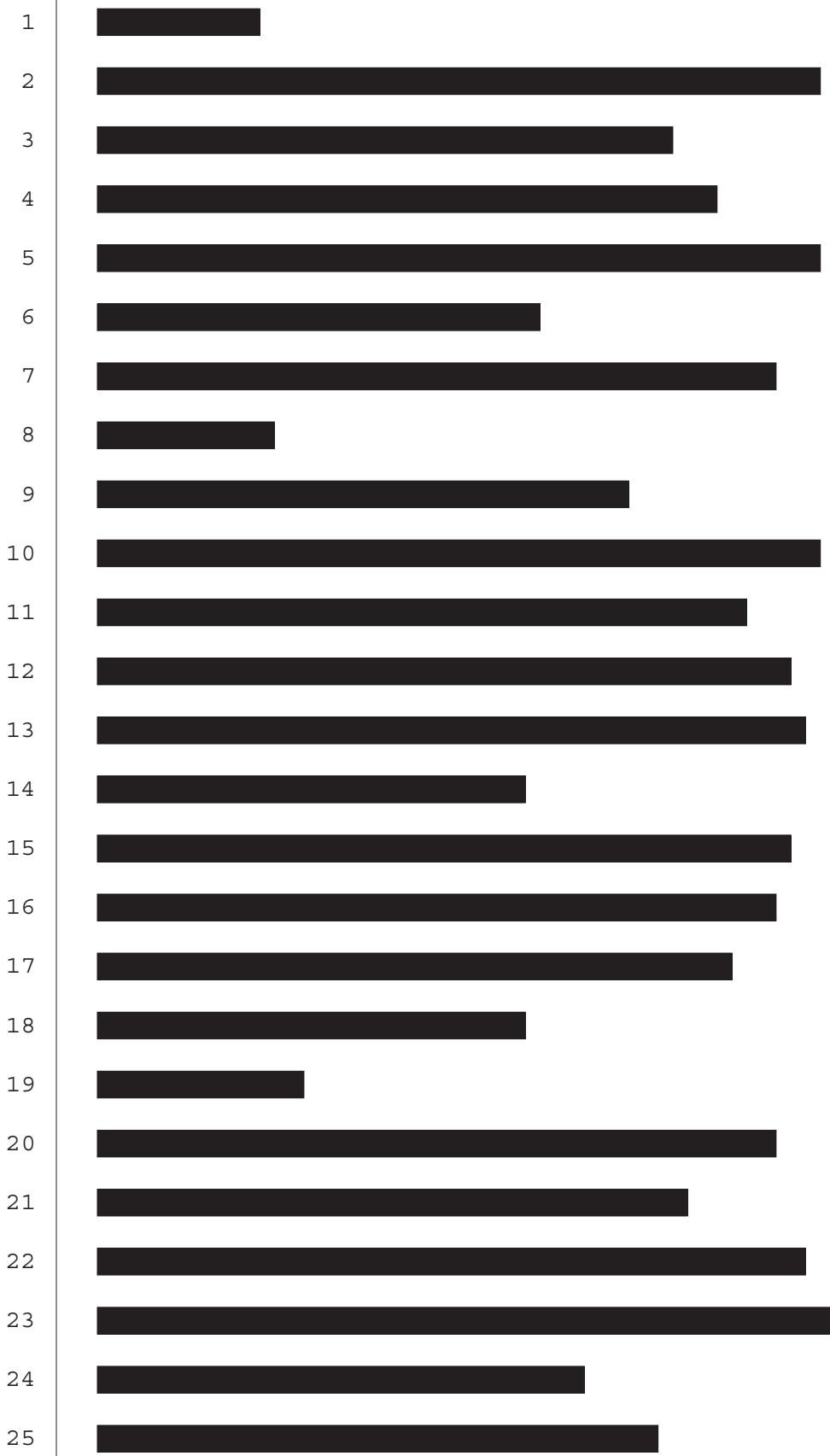
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19 BY MR. HUDSON:

20 Q. Do you have any education specifically
21 on compliance, in other words, complying with laws
22 related to the Controlled Substances Act?

23 MR. KOBIN: Object to form.

24 THE WITNESS: I'm familiar with the
25 Controlled Substances Act as it pertains to the

1 practice of retail pharmacy.

2 BY MR. HUDSON:

3 Q. How about the Controlled Substances Act
4 as it relates to manufacturers or distributors of
5 controlled substances?

6 A. No, no, I'm not familiar with those
7 regs.

8 Q. Any knowledge of the distributor
9 requirements under the Controlled Substances Act?

10 MR. KOBIN: Object to form.

11 THE WITNESS: No.

12 BY MR. HUDSON:

13 Q. Ever been in any meetings where there
14 was ever any discussion about actions being taken
15 by HBC to meet the distributor requirements of the
16 Controlled Substances Act?

17 MR. KOBIN: Object to form.

18 THE WITNESS: No, not specific to HBC.
19 I was in generalized meetings just about overall
20 company quality practices and things like that, of
21 which, you know, I can't -- I wouldn't be able to
22 say that I've never heard an HBC question being
23 asked or a comment being made, but I've never been
24 in a meeting specifically to design a warehouse
25 function. I was in retail.

1 BY MR. HUDSON:

2 Q. Did you have an understanding that
3 distributors had an obligation to design a system
4 to disclose to the distributor suspicious orders
5 of controlled substances?

6 MR. KOBRIN: Object to form. Assumes
7 facts not in evidence.

8 THE WITNESS: I'm aware that
9 organizations and distributors have controls in
10 place and we have to trust those controls. But
11 the specifics of those I'm not familiar with.

12 BY MR. HUDSON:

13 Q. Do you know whether or not distributors
14 had an obligation to design a system to monitor
15 for suspicious orders of controlled substances?

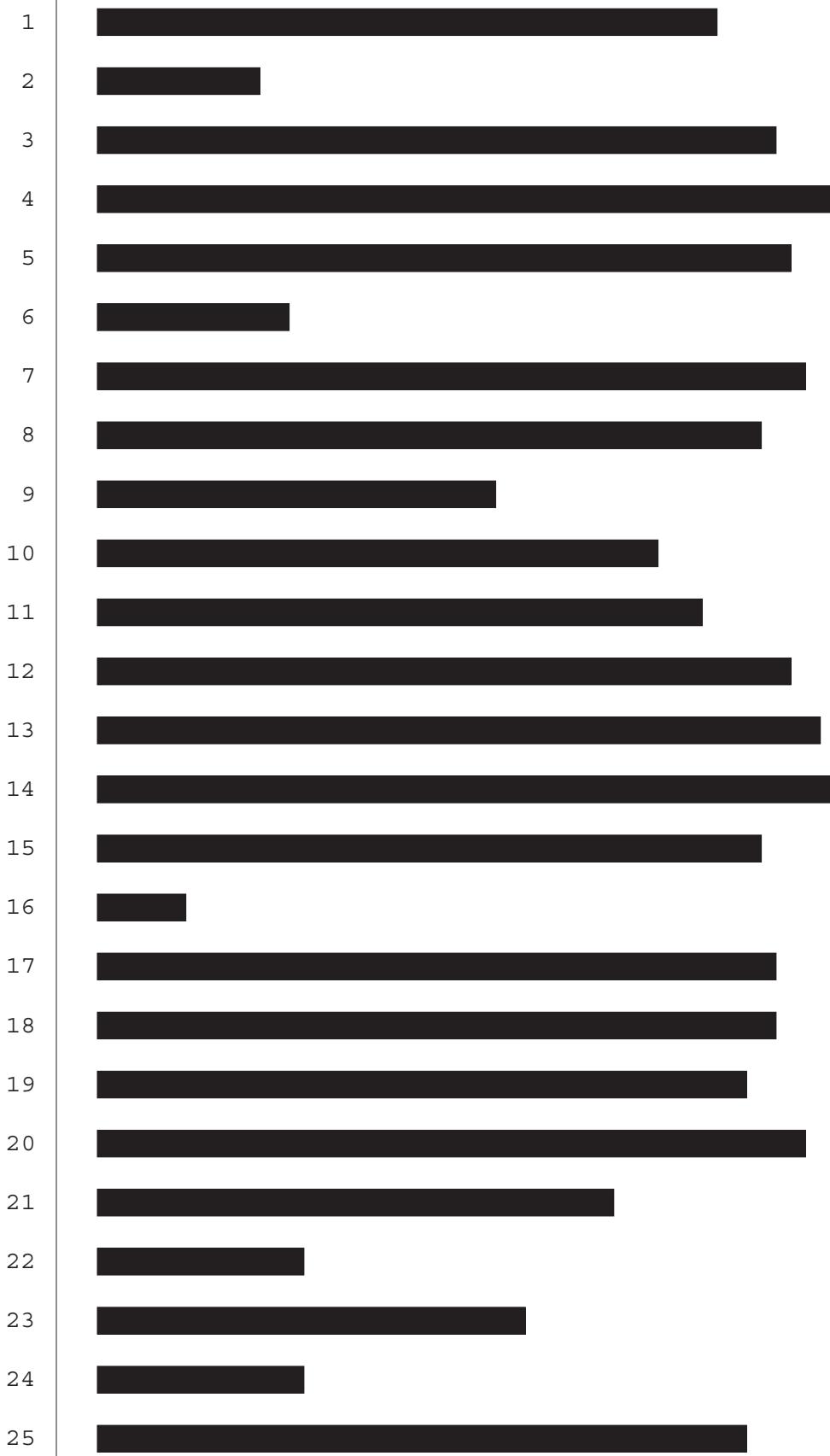
16 MR. KOBRIN: Object to form.

17 THE WITNESS: I'm not aware of specific
18 requirements when it comes to that area. I wasn't
19 in that part of the business.

20 BY MR. HUDSON:

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16 BY MR. HUDSON:

17 Q. In your training as a pharmacist, did
18 you have any training specific to opioids?

19 A. Not specific. Our training was more
20 about the Pharmacy Act. It was legal in general
21 of which controlled substances were part.

22 Q. Do you have any knowledge, either
23 specific knowledge or training, on diversion of
24 controlled substances?

25 MR. KOBIN: Object to form.

1 THE WITNESS: My knowledge is what the
2 legal requirements are to run a practice of a
3 pharmacy.

4 BY MR. HUDSON:

5 Q. And it focused specifically on retail
6 pharmacies?

7 A. Well, that was my focus. You can do a
8 lot of different things with a pharmacy degree.

9 Q. Did you have any knowledge, for example,
10 of opioids that were most likely to be abused or
11 diverted?

12 A. No, not specific to opioids diversion.

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1 chance to ask him questions, and you can clarify
2 at that time if you think there's something that's
3 misleading.

4 BY MR. HUDSON:

5 Q. You testified, sir, that it's your
6 belief that there were policies relating to the
7 monitoring of suspicious orders. Did I get that
8 right?

9 A. No. What I'm saying is --

10 MR. KOBIN: Object to form.

11 THE WITNESS: -- I'm aware of policies
12 that are designed to prevent diversion, and there
13 are many of them that we had in terms of the
14 practice of pharmacy.

15 BY MR. HUDSON:

16 Q. And were those written policies?

17 A. We had written procedures when it came
18 to controlled substances, what our stances were.
19 We had many nonwritten reinforcements that
20 pharmacists were in a position to make good
21 decisions in terms of dispensing practices and we
22 would honor those decisions.

23 We had written policies in terms of who
24 handled controlled substances and training
25 procedures for technicians and documentation

1 requirements being held based on legal
2 requirements, et cetera.

3 Q. Let's just, if we could, make a list of
4 these policies. So the first that I heard was
5 good decisions on dispensing.

6 A. We supported pharmacists' right to make
7 professional judgments as to what was proper and
8 improper in terms of dispensing, made sure the
9 pharmacists knew that they had the right, final
10 right of decision making when it came to
11 dispensing.

12 We had our controlled substance procedures
13 that we made sure was distributed. We had audit
14 procedures that were done quarterly and documented
15 in accordance with what our procedures and
16 policies were at the time. We had practices in
17 terms of document retention and what needed to be
18 done in terms of proper ordering, training,
19 training on -- we had manuals and references
20 regarding not only the DEA, but Pharmacy Act and
21 fraud, waste and abuse policies, CBTs, annual
22 meetings with a lot of discussions of what the
23 obligation of pharmacists were and helped in any
24 way.

25 We've had DEA inspections which were never --

1 never got any feedback that we weren't doing
2 anything other than what was required from us from
3 a legal perspective.

4 Q. So I just want to make sure I've got an
5 exhaustive list. One was good decisions on
6 dispensing. Then you said you gave pharmacists or
7 professionals the ability to make professional
8 judgments on dispensing controlled substances?

9 A. Yeah, supported by the Pharmacy Act,
10 yes.

11 Q. And then the second one was controlled
12 substance procedures?

13 A. Again, Giant Eagle had a controlled
14 substance policy that's part of the control box,
15 and the company made sure that we communicated
16 what those procedures are to the pharmacy.

17 Q. And what were those policies?

18 A. I can't recite them. It was part of the
19 control box.

20 Q. When you say control box, what do you
21 mean by that?

22 A. There was a physical box in every
23 pharmacy that was a single place to look for
24 procedures, documents, records, that type of
25 thing. We called it the control box.

1 Q. It was a control box for Schedule II
2 controlled substances?

3 A. Yes. It had other information in there.
4 It was all controls, but Schedule II was part of
5 that.

6 Q. Do you know if the control box -- if
7 Schedule III controlled substances would be
8 contained in the control box?

9 A. Well, just general --

10 MR. KOBRIN: Object to form.

11 THE WITNESS: Not to my knowledge. I
12 don't think there's specific -- like DEA manuals
13 aren't specific just to that. They're all
14 inclusive of the thing.

15 BY MR. HUDSON:

16 Q. So all controlled substances would be in
17 the control box?

18 MR. KOBRIN: Object to form.

19 THE WITNESS: Information regarding,
20 yeah.

21 BY MR. HUDSON:

22 Q. Information regarding controlled
23 substances. So it's not like a physical box that
24 you put certain controlled substances into?

25 A. Oh, no, no. I'm talking about

1 documentation here. No. Controlled substances,
2 Schedule IIs, were kept in lock and key, in safes.
3 III through Vs would be distributed in the
4 pharmacy in a proper fashion in accordance with
5 the law.

6 Q. The control box then would be a box that
7 would have policies or procedures in it?

8 A. Policies, procedures, the records in
9 terms of ordering and dispensing, all the
10 reference materials, fraud, waste and abuse, the
11 technician certifications, those types of things.

12 Q. And would there be a control box that
13 would be contained at each Giant Eagle retail
14 pharmacy?

15 A. Yes.

16 Q. And would the control box contain the
17 same basic set of -- would you call them policies
18 or procedures or how would you describe them?

19 A. Both.

20 Q. Would there be things beyond just
21 policies and procedures in the control box?

22 A. I don't recall exactly what was in each
23 tab of the box, but things like the order records.
24 If you had CIIs, those order records would be
25 maintained, or dispensing logs associated with it.

1 At one time I want to say that there was
2 records of the actual audits we would do monthly,
3 but that moved over to an electronic format, and I
4 can't recall if that was part of the box after
5 that.

6 Q. The third thing I had was audit
7 procedures. So if you could, just describe for me
8 what the audit procedures were.

9 A. First of all, the state and local
10 authorities would do audits at will. In terms of
11 ours, we did quarterly audits that were all
12 inclusive of operational practice. That included
13 making sure that the box was in order and the
14 things that needed to be there were in there.

15 Every month we would audit every controlled
16 substance. Annually we would do a hand count of
17 every controlled substance in the pharmacy. We
18 would do routine audits, virtual inventory logs,
19 lots of stuff like that.

20 Q. So for those audits of controlled
21 substances, would you do a physical count of each
22 prescription --

23 MR. KOBRIN: Object to form.

24 BY MR. HUDSON:

25 Q. -- or each bottle? Describe for me what

1 that procedure looked like.

2 MR. KOBRIN: Object to form.

3 THE WITNESS: Which procedure?

4 BY MR. HUDSON:

5 Q. The audit procedure.

6 A. Which one?

7 Q. For reviewing inventory.

8 A. Every month there was a requirement to
9 hand count every CII narcotic, record that against
10 what was dispensed.

11 Q. Was the process the same for Schedule II
12 controlled substances versus Schedule III
13 controlled substances?

14 A. Schedule IIIs through Vs, there was -- I
15 believe the state requires it every two years. We
16 did it annually.

17 Q. So was the monthly audit procedure
18 focused exclusively on the Schedule II controlled
19 substances?

20 A. That particular procedure was about
21 control IIIs, yes.

22 Q. So there was not a monthly audit
23 procedure that applied to Schedule III controlled
24 substances?

25 MR. KOBRIN: Object to form.

1 THE WITNESS: First of all, there was a
2 daily audit of all controls. We had a virtual
3 log. Every pharmacist got the chance to see the
4 virtual inventory dispensings and what was being
5 ordered on a nightly basis.

6 Records were printed every night in terms of
7 what was dispensed on the controlled substance.

8 I'm speaking specifically to a required audit
9 which was a monthly procedure, not day in/day out
10 operating procedures.

11 There was daily monitoring of who could touch
12 the safe, who could count. If anything, I think
13 we always erred on the side do more rather than
14 less when it came to procedures with controlled
15 substances.

16 BY MR. HUDSON:

17 Q. Were Schedule IIIs though in the vault?

18 A. I don't recall Schedule IIIs being in
19 the vault. Actually, Vicodin or hydrocodone
20 products, at one time I believe we made -- we
21 treated them with the same control II substance
22 policy. I don't recall the dates around that, but
23 I do recall moving the hydrocodone combination
24 products into the safe or at least a portion of
25 those. I don't recall the specifics of that.

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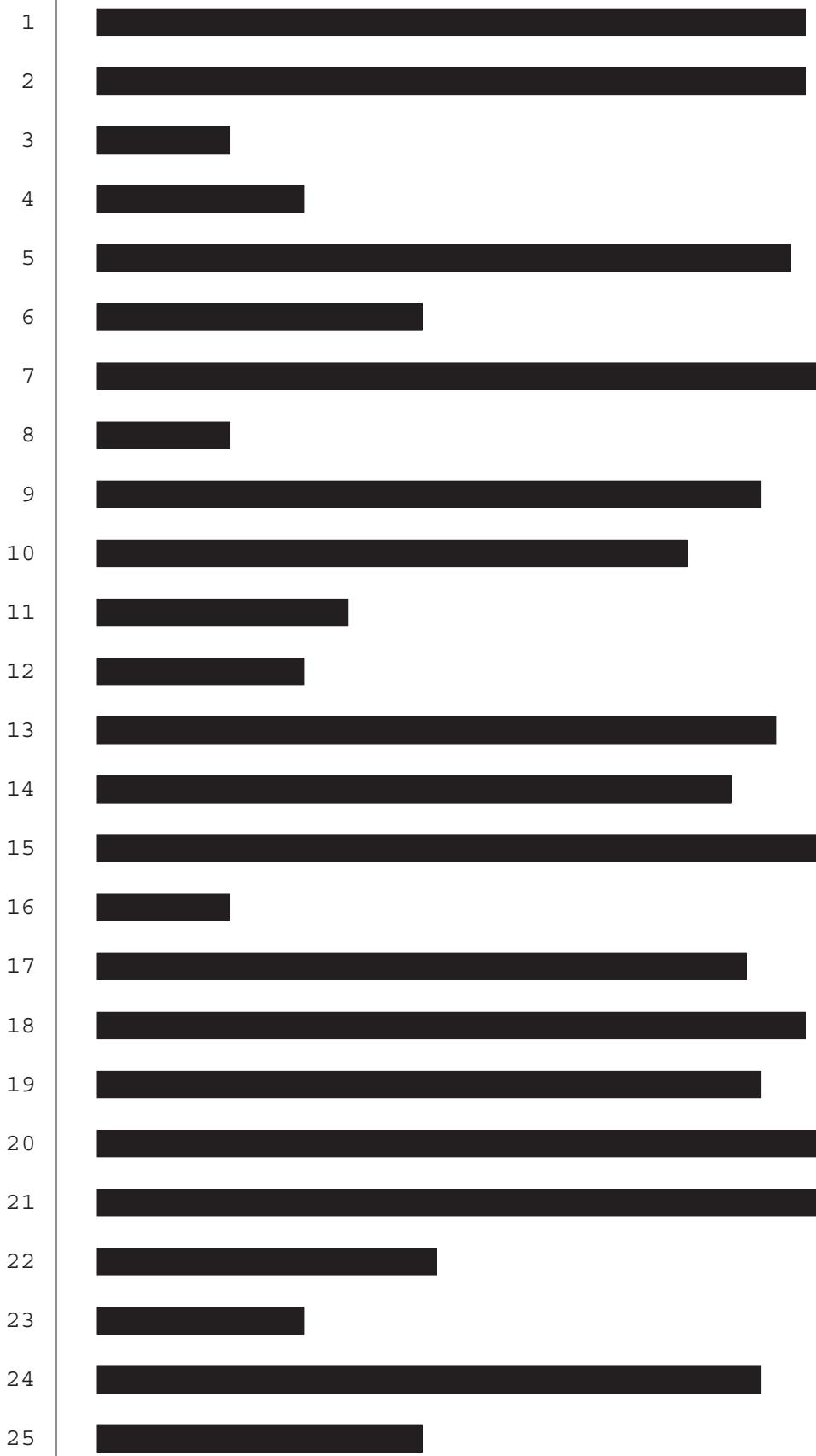
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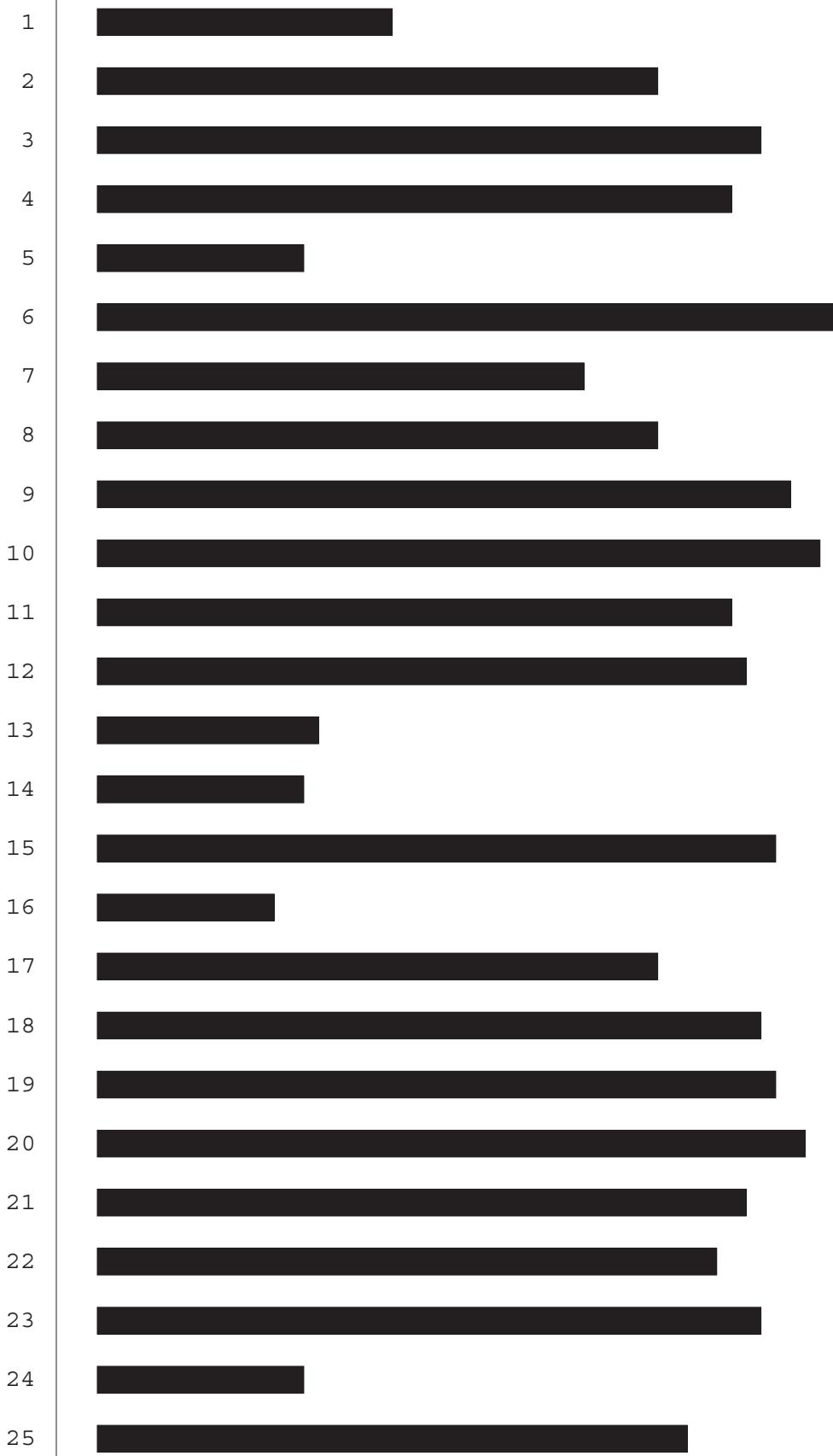
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21 (HBC-Mollica Exhibit 5 was marked.)

22 BY MR. HUDSON:

23 Q. Let me hand you what I've marked as

24 Exhibit 5.

25 MR. HUDSON: This one I do have copies

1 of.

2 BY MR. HUDSON:

3 Q. Mr. Mollica, my questions are going to
4 be focused on pages 4, 5, 6 and 7 of this
5 document.

6 A. Are these numbers or numbered?

7 Q. No, I'm sorry, I don't believe the pages
8 are numbered.

9 A. You said 4?

10 Q. Yeah, where it says Settlement Agreement
11 with the State Board of Pharmacy. Then underneath
12 that, Giant Eagle #4098.

13 Do you agree or do you see at the front that
14 these are minutes of the December 5 through 7,
15 2011 meeting of the Ohio State Board of Pharmacy?

16 A. Yes.

17 Q. And Giant Eagle operated retail
18 pharmacies in Ohio; correct?

19 A. Yes.

20 Q. And do you know Kelly Chappell?

21 A. I'm familiar who she is.

22 Q. Who is Kelly Chappell?

23 A. A pharmacist.

24 Q. And was she a pharmacist at a Giant
25 Eagle pharmacy in Ohio?

1 A. Yes.

2 Q. And do you see on the seventh page of
3 this document -- I apologize it's two sided -- do
4 you see the signature of Kelly Chappell there
5 dated 11/11/2011?

6 A. I don't see a signature, no. I'm sorry.

7 Q. No problem.

8 A. I see a line where it has her name on
9 it, yes.

10 Q. You see the S?

11 A. Yes. Thank you.

12 Q. So it's an electronic signature.

13 A. Understood.

14 MR. KOBRIN: Ty, do you know if it's
15 related to the jurisdictional question?

16 MR. HUDSON: I don't.

17 BY MR. HUDSON:

18 Q. If you could, just take a moment to look
19 at the section of these minutes that start
20 Settlement Agreement with the State Board of
21 Pharmacy, Docket Number D-110714-197, that page
22 through the page which Ms. Chappell has signed.

23 MR. KOBRIN: I have a standing objection
24 to this because I think this incident and
25 everything related to it occurred outside of the

1 City of Cleveland, County of Summit, County of
2 Cuyahoga and any other jurisdiction relevant to
3 this Track One case. I'm not sure how this is
4 relevant.

5 (Witness reviewed the exhibit.)

6 THE WITNESS: I've read it.

7 BY MR. HUDSON:

8 Q. Mr. Mollica, have you had a chance to
9 review the settlement agreement between Giant
10 Eagle and the State Board of Pharmacy?

11 A. The four pages that start on page 4 and
12 end with Kelly Chappell's signature, yes.

13 Q. Yes. If you see on the first page
14 there, I guess a third of the way down on page 4,
15 it starts out R2012-102 Settlement Agreement with
16 the State Board of Pharmacy.

17 A. Yes.

18 Q. And before coming here today, were you
19 aware that Giant Eagle pharmacy entered into a
20 settlement agreement with the State Board of
21 Pharmacy in Ohio?

22 A. Yes.

23 MR. KOBIN: Objection.

24 BY MR. HUDSON:

25 Q. You were aware of this particular

1 agreement?

2 A. I don't know the details of the
3 agreement, but I'm aware there was a situation in
4 that particular location and that we complied with
5 whatever the state board pieces were.

6 MR. KOBRIN: Ty, do you consent to our
7 standing objection on this being outside the
8 jurisdiction?

9 MR. HUDSON: Yes.

10 BY MR. HUDSON:

11 Q. Mr. Mollica, you've testified to your
12 knowledge, Giant Eagle always complied with the
13 law; right?

14 A. That's correct.

15 Q. But this would be an example where the
16 State of Ohio Board of Pharmacy charged Giant
17 Eagle with not complying with the law; correct?

18 MR. KOBRIN: Object to form.

19 THE WITNESS: That's actually not how
20 I'm reading it, no.

21 BY MR. HUDSON:

22 Q. You don't read this as the State of Ohio
23 accusing Giant Eagle Pharmacy of not complying
24 with the law?

25 MR. KOBRIN: Object to form.

1 THE WITNESS: Could you direct me to a
2 particular passage where it says that Giant Eagle
3 was compliant with the law?

4 BY MR. HUDSON:

5 Q. Was not compliant with the law?

6 A. Could you direct me to a part there?

7 Q. I'll just walk you through. We'll go
8 through numbers two, three.

9 Number two says, "Giant Eagle Pharmacy #4098
10 did from May 1, 2009 through January 21, 2011 fail
11 to provide effective and approved controls and
12 procedures to deter and detect theft and diversion
13 of dangerous drugs, to wit: The following
14 controlled substances and dangerous drugs where
15 stolen from the pharmacy, yet internal control
16 procedures failed to deter or detect the theft.

17 The drugs were stolen by an inadequately
18 supervised technician who admitted to a board
19 agent that the drugs were diverted to her addicted
20 husband and also sold to another individual."

21 A. I see that line, but I don't see a
22 reference that it's not complying with the law.
23 It sounds like a criticism of the internal
24 control.

25 Q. Who has the responsibility to create

1 internal controls?

2 MR. KOBRIN: Object to form.

3 THE WITNESS: Everyone including the
4 pharmacist, the company, everybody.

5 BY MR. HUDSON:

6 Q. Who is the named party in this action
7 that's brought by the Ohio State Board of
8 Pharmacy?

9 MR. KOBRIN: Object to form.

10 THE WITNESS: I don't know how to read
11 the legal document. Are you referring to Giant
12 Eagle 4098?

13 BY MR. HUDSON:

14 Q. Yeah. The legal entity is Giant Eagle;
15 right?

16 A. Yeah.

17 MR. KOBRIN: Object to form.

18 (HBC-Mollica Exhibits 6 - 7 were marked.)

19 BY MR. HUDSON:

20 Q. As an example, I'll show you. Let me
21 mark a couple more. We can look at those and
22 compare those. I hand you what I've marked
23 Exhibit 6. We'll mark this one as Exhibit 7.

24 If we take a look here, Exhibit 5 are minutes
25 of the December 5 through 7, 2011 meeting of the

1 Ohio State Board of Pharmacy. Do you see that?

2 That's the one we've been talking about.

3 A. Yes.

4 Q. And if you look there, the named entity
5 in the action by the Ohio State Board of Pharmacy
6 is Giant Eagle; right?

7 A. Right. Okay.

8 Q. Now, if we look at Exhibits 6 and 7,
9 those are minutes of the November 2 through 4,
10 2009 Ohio State Board of Pharmacy and then minutes
11 of the January 4 through 6, 2010 Ohio State Board
12 of Pharmacy; right. Do you see that?

13 A. Yes.

14 Q. So if you look at these two -- and,
15 again, I apologize these aren't numbered -- but if
16 you look at these two and you go back one, two,
17 three, four, five, six, the seventh full page.

18 MR. KOBRIN: This is Exhibit 6?

19 MR. HUDSON: This is 7.

20 BY MR. HUDSON:

21 Q. Sixth page back and actually onto the
22 next, seventh page, right, do you see that?

23 A. Yes.

24 Q. Do you see there Justin Allan Bracken?

25 MR. KOBRIN: Which one?

1 THE WITNESS: Would you turn yours so I
2 can make sure?

3 BY MR. HUDSON:

4 Q. Sure. Exhibit 6.

5 A. No. I got that. The page you're on.

6 Q. It's just the back, I think, of page 6 I
7 believe.

8 MR. KOBRIN: Six of six?

9 MR. HUDSON: Yep, and seven, the back
10 page of it.

11 THE WITNESS: These are single pages.

12 MR. HUDSON: That's why. It's probably
13 14.

14 BY MR. HUDSON:

15 Q. If you could just in Exhibit 6, the
16 pharmacist is Justin Allan Bracken and in Exhibit
17 7, the pharmacist is Myra Joy Hindes. It should
18 be page 12.

19 So in Exhibit 6 you see the pharmacist is the
20 named party Justin Allan Bracken?

21 A. Yes.

22 MR. KOBRIN: Is this a Giant Eagle case?

23 MR. HUDSON: Yes.

24 BY MR. HUDSON:

25 Q. And then if we look at Exhibit 7, we go

1 back, I believe, the 13th page.

2 MR. KOBRIN: Do you know if these fall
3 within the jurisdiction?

4 MR. HUDSON: I don't, but I'll give you
5 a standing objection.

6 MR. KOBRIN: This one is in West
7 Virginia?

8 MR. HUDSON: She's a pharmacist in West
9 Virginia.

10 THE WITNESS: Can we have a standing
11 objection to the reference pages on Exhibit 7,
12 outside the jurisdiction in this case, and also a
13 standing objection as to Mollica 6 which I believe
14 is also outside the jurisdictions in this Track
15 One litigation, in Track One of this litigation.
16 So both of these incidents are unrelated to Track
17 One.

18 BY MR. HUDSON:

19 Q. Mr. Mollica, do you see there on
20 Exhibit 7 that the pharmacist is the person named?

21 A. Yes.

22 Q. And I'll represent to you in both of
23 these cases, they relate to incidents that
24 occurred at Giant Eagle pharmacies. Okay?

25 A. Okay.

1 Q. If we go back to Exhibit 5, you agree
2 that particular set of instances, the Ohio State
3 Board of Pharmacy was charging Giant Eagle with
4 having insufficient internal controls; correct?

5 A. Yeah. My original question was I just
6 didn't know how to read the document.

7 Q. Right. But you agree though now
8 understanding how to read the document this is an
9 example of the Ohio State Board of Pharmacy
10 accusing Giant Eagle of not complying with the
11 law; correct?

12 MR. KOBRIN: Object to form.

13 THE WITNESS: I just don't agree with
14 that statement. There's a -- there's a question
15 about were the practices effective enough, but it
16 doesn't state anything about not following the
17 law.

18 BY MR. HUDSON:

19 Q. The State of Ohio Board of Pharmacy
20 accused Giant Eagle of not having internal control
21 procedures to deter or detect the theft of these
22 controlled substances; right?

23 MR. KOBRIN: Object to form.

24 THE WITNESS: As I'm reading it, it's
25 stating that the controls that we have in place

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1 weren't effective in this case.

2 BY MR. HUDSON:

3 Q. Right. And as a result, they've brought
4 an action against Giant Eagle.

5 A. Yes.

6 MR. KOBRIN: Object to form.

7 BY MR. HUDSON:

8 Q. They didn't bring this action against
9 the individual pharmacist. They brought it
10 against Giant Eagle.

11 MR. KOBRIN: Object to form.

12 THE WITNESS: As I'm reading this, that
13 would be my understanding. I'm not that familiar
14 with legal documents like this.

15 BY MR. HUDSON:

16 Q. Sure. If we go to the third paragraph,
17 it says, "Giant Eagle Pharmacy #4098 did from
18 May 1, 2009 through January 21, 2011 fail to
19 provide effective and approved controls and
20 procedures to deter and detect theft and diversion
21 of dangerous drugs, to wit: The following
22 controlled substances and dangerous drugs were
23 stolen from the pharmacy, yet internal control
24 procedures failed to deter or detect the theft.
25 The drugs were stolen by an inadequately

1 supervised technician who admitted to a Board
2 agent that the drugs were diverted to her addicted
3 husband and also sold to another individual."

4 Do you see that?

5 A. I see that.

6 Q. And then down below, it's got a list of
7 drugs. Do you see there a series of hydrocodone
8 combination products?

9 A. Yes.

10 Q. Of different strengths; correct?

11 A. Yes.

12 Q. Then underneath that, it says, "Such
13 conduct is in violation of Rule 4729-9-05 of the
14 Ohio Administrative Code."

15 A. Yes.

16 Q. And this document shows Giant Eagle
17 entering into a settlement of these accusations;
18 correct?

19 MR. KOBIN: Object to form.

20 THE WITNESS: That's how I would
21 interpret it with the couple paragraphs I read.

22 BY MR. HUDSON:

23 Q. Sure. If Giant Eagle had the internal
24 control procedures in place like you talked about
25 that were tracking specifically each order as it

1 was being filled, why then was Ohio charging them
2 with having inadequate internal controls?

3 MR. KOBRIN: Object to form. You're
4 asking him not only to understand what someone
5 else did, but what another state entity did?

6 THE WITNESS: I can't speak to what
7 Ohio's position was on it. We had controls in
8 place. It looks like in this particular
9 situation, an employee who understood our
10 procedures was violating those procedures.

11 BY MR. HUDSON:

12 Q. Right. In a couple of other instances,
13 the State of Ohio actually sued or brought
14 charges, I should say, or brought actions against
15 those two specific pharmacists; right?

16 A. I don't know. I honestly don't know.

17 Q. Well, that's Exhibits 6 and 7 that we
18 looked at; right?

19 A. You asked me to look at a name on
20 Exhibit 7.

21 Q. Let's just take a quick look then, if we
22 could, at Exhibit 6 and go back to that section in
23 the action against Justin Allan Bracken.

24 MR. KOBRIN: You're consenting to our
25 standing objection on 6 and 7, Ty?

1 MR. HUDSON: Yes.

2 BY MR. HUDSON:

3 Q. If you look there, and we go back to --
4 the action against Justin Allan Bracken, if you go
5 back to the fourth page of this particular action,
6 look at paragraph 8.

7 So in this particular case, this is Ohio
8 making allegations specifically against Justin
9 Allan Bracken. Do you see that?

10 A. Yes.

11 Q. "That he did from April 30, 2007 to
12 May 20, 2009 with purpose to divert, knowingly
13 obtain or exert control over dangerous drugs, the
14 property of Giant Eagle Pharmacy #4152 beyond the
15 express or implied consent of the owner, to wit:
16 Justin Allan Bracken possessed a stock container
17 of" -- do you know how to pronounce that drug?

18 A. Temazepam.

19 Q. -- "temazepam, 15-milligram, from his
20 employer. Audit figures indicate shortages of the
21 same drug Justin Allan Bracken possessed."

22 Do you see that?

23 A. Yes.

24 Q. If we look in Exhibit 6, this would be
25 an example where the audit figures actually caught

1 Justin Allan Bracken taking possession of these
2 controlled substances; is that fair?

3 MR. KOBRIN: Object to form.

4 THE WITNESS: You can imply that from
5 here. I don't know the exact circumstances of how
6 he was caught.

7 BY MR. HUDSON:

8 Q. It says audit figures indicate shortages
9 of the same drugs Justin Allan Bracken possessed;
10 right?

11 A. Sure. I guess I'm just saying I don't
12 know if that's how he was caught.

13 Q. If we go back to Exhibit 5, the action
14 against Giant Eagle, in that particular situation,
15 the State of Ohio Board of Pharmacy is actually
16 bringing the action against Giant Eagle because
17 its internal controls failed to detect these
18 actions being taken; right?

19 MR. KOBRIN: Object to form.

20 Misrepresents the exhibit.

21 THE WITNESS: I disagree. Internal
22 controls would have caught a shortage if someone
23 was manipulating internal controls. That's my
24 feeling on what was going on here.

1 BY MR. HUDSON:

2 Q. Your feeling would be that if somebody
3 was manipulating the drugs, the internal controls
4 would catch them each and every time?

5 MR. KOBRIN: Object to form.

6 THE WITNESS: No. I'm saying if someone
7 was manipulating the internal control, the person,
8 in this case, a pharmacist who we put in charge of
9 keeping the standard of our internal control, was
10 manipulating that control in this particular
11 situation, they would -- it created, it looks
12 like, a diversion.

13 But that's not to imply that there wasn't
14 internal controls that wouldn't have caught it if
15 someone is manipulating those internal controls.

16 BY MR. HUDSON:

17 Q. Do you know why Giant Eagle agreed to
18 settle these accusations by the State of Ohio
19 Board of Pharmacy?

20 MR. KOBRIN: Object to form.

21 THE WITNESS: No. I don't know the
22 specifics on why.

23 BY MR. HUDSON:

24 Q. Do you have any more knowledge about
25 whether Giant Eagle took any additional actions

1 after the settlement to address the accusations by
2 Ohio that the internal controls were inadequate?

3 MR. KOBRIN: Object to form. It
4 misrepresents the evidence.

5 THE WITNESS: I know that as a result of
6 any incident, and especially ones like this, that
7 Giant Eagle took many actions to continually try
8 to improve and build new mousetraps when it comes
9 to internal controls and how we measure them.

10 BY MR. HUDSON:

11 Q. Anything more specific you can say about
12 specific actions or steps Giant Eagle took after
13 the settlement with the Ohio Board of Pharmacy in
14 2011?

15 A. Sure. I mean, I can't say that they're
16 specific to this particular situation, but from
17 2011 moving forward, there were things like moving
18 to more virtual inventory and moving away from
19 paper to electronics. There was a company called
20 Supply Logics that Giant Eagle engaged to bring
21 more visibility to this. You could see if an
22 associate was manipulating an internal control or
23 changing an inventory figure to read more
24 favorably on a report. Heightened awareness in
25 terms of physical audits that we would do, more

1 training.

2 We always tried to use situations where bad
3 players is an opportunity to reevaluate and come
4 up with new procedures to stay ahead of it.

5 Q. In your mind, did the procedures at
6 Giant Eagle become better at detecting diversion
7 over time?

8 A. I would like to think they became
9 better. That was always the goal, was to make it
10 better and better. You don't know what you don't
11 know. But when you see a weakness in an area or
12 if someone can exploit it, you work to try to stop
13 someone from being able to exploit it.

14 (HBC-Mollica Exhibit 8 was marked.)

15 BY MR. HUDSON:

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12 [REDACTED]

13 BY MR. HUDSON:

14 Q. At the time that you were with Rite-Aid,
15 do you know whether Rite-Aid had controls or
16 limits?

17 A. I actually --

18 MR. KOBRIN: Object to form. Just be
19 careful. I don't know how much we want to get
20 into your experience at Rite-Aid or any company
21 information with regard to Rite-Aid. So if you
22 think you're getting into anything that is
23 confidential or anything related to Rite-Aid, if
24 you can let us know before you testify to that
25 information.

1 THE WITNESS: In my time as a pharmacy
2 supervisor with Rite-Aid, I'm not familiar with
3 any limit on a dispensing practice.

4 BY MR. HUDSON:

5 Q. Was there any reason why there couldn't
6 be limits on dispensing certain quantities of
7 controlled substances?

8 A. That's hard to say because not every
9 patient is the same. You could have a controlled
10 substance that's dispensed for someone who came
11 from the dentist, and you can have controlled
12 substances dispensed to someone who is, you know,
13 chronically ill with cancer. Their dispensing
14 guidelines are completely different.

15 Because there's so much circumstantial and
16 relevant decisions have to be made to a specific
17 patient, I don't know how you can do that
18 effectively. How do you have a scarlet line as to
19 what a patient needs? The doctor is really
20 involved with that.

21 The pharmacist's role is to make sure that
22 those physicians are operating within the guidance
23 of what we believe their practice should be and
24 that it's not violating a safety requirement in
25 terms of what the dispensing doses should be from

1 the manufacturer. I just don't know how you would
2 do that.

3 Q. How would you exercise professional
4 responsibilities? What criteria would a
5 pharmacist apply to determine whether or not a
6 quantity of controlled substances is too much to
7 be dispensed?

8 MR. KOBRIN: Object to form.

9 THE WITNESS: I can give you examples
10 from my experiences, you know. A combination drug
11 with hydrocodone and Tylenol in it, you would have
12 to make sure -- there's guidelines from the
13 manufacturer in terms of what normal dispensing
14 is. There's also limits of which the amount of
15 Tylenol would exceed a safe dose. And if there
16 were things outside those limits, you would call
17 and verify with the physician the accuracy of that
18 and make professional judgment decisions as to
19 whether or not they make sense.

20 BY MR. HUDSON:

21 Q. How would you apply the dispensing
22 guidelines set by the manufacturer? In other
23 words, how would you go and apply that to a
24 particular patient who brings in a prescription?

25 A. Well, I mean, as an example, if a dosing

112

1 guideline for a drug says, you know, up to four
2 times a day and the doctor was writing ten times a
3 day, you would question that and document that, or
4 with the physician sometimes say, no, I'm not
5 filling this. I feel it's not safe.

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

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14 BY MR. HUDSON:

15 Q. Anything more specific than though what
16 pharmacists learn in pharmacy school to obtain a
17 license that you can say in terms of a criteria
18 that --

19 MR. KOBRIN: Object to form.

20 THE WITNESS: What I'm talking about is
21 clinical.

22 MR. KOBRIN: Object to form.

23 THE WITNESS: Clinical training is what
24 pharmacists get, and they use that clinical
25 training to make evaluations as to whether or not

1 something meets those guidelines.

2 BY MR. HUDSON:

3 Q. Let me ask it this way: Do you believe
4 that we have a problem with diversion of opioids
5 in our country?

6 A. Our country has a problem with opioids?

7 Q. Yes.

8 A. I think opioids can create harm in the
9 country if they're used illicitly, yes.

10 Q. But my question specifically is: Do you
11 believe that we have a problem with diversion of
12 opioids in our country?

13 A. I believe that there are folks who will
14 use these types of products illicitly, yes.

15 Q. My question is broader than that.

16 Do you believe we have a problem with
17 diversion of opioids in our country?

18 A. I don't know if diversion is the opioid
19 problem versus illicit use of it. My feeling is
20 the problem the country has is illicit use of
21 these products. If diversion is a part of
22 illicit, then I believe it's an illicit use of
23 these things.

24 Q. That's what I'm trying to figure out.
25 Everybody who is a pharmacist had go to pharmacy

1 school; right?

2 A. Yes.

3 Q. They had to take the oath and get a
4 license to obtain the ability to dispense drugs;
5 right?

6 A. Yes.

7 Q. The government, I think it's widely
8 known, has said that we have a problem with
9 diversion of opioids in our country.

10 My question is: How can that occur if
11 pharmacists are always following what they learned
12 in pharmacy school and what they had to do in
13 order to get a license given that type of
14 professional judgment?

15 MR. KOBRIN: Object to form.

16 THE WITNESS: So you don't think that
17 someone could steal something out of someone's
18 medicine cabinet or take something out of
19 someone's bag or those types of things? That's
20 why when you're saying diversion, I'm saying
21 illicit. If someone is obtaining these things in
22 an improper way, yes, I believe it can cause harm.

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

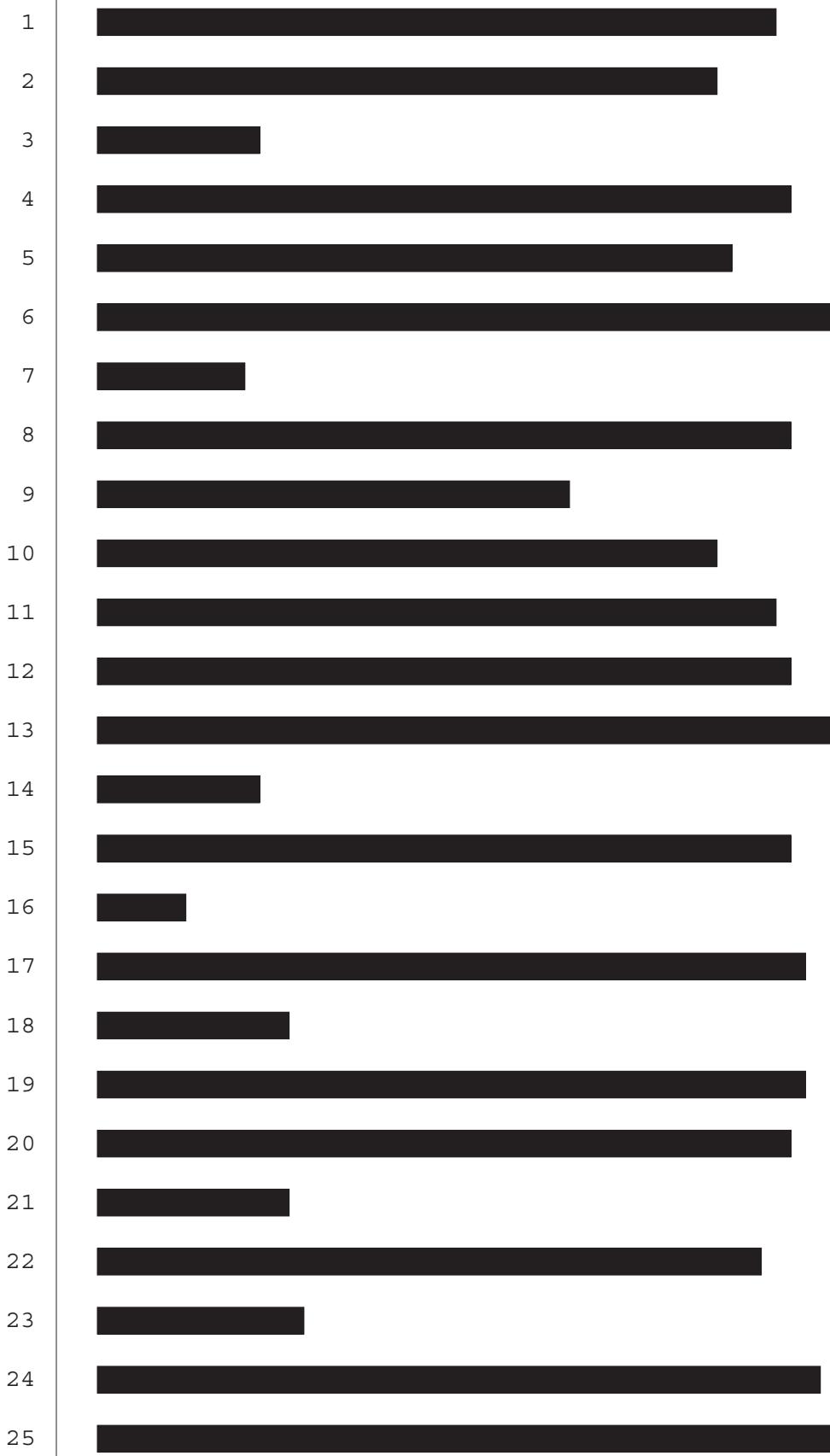
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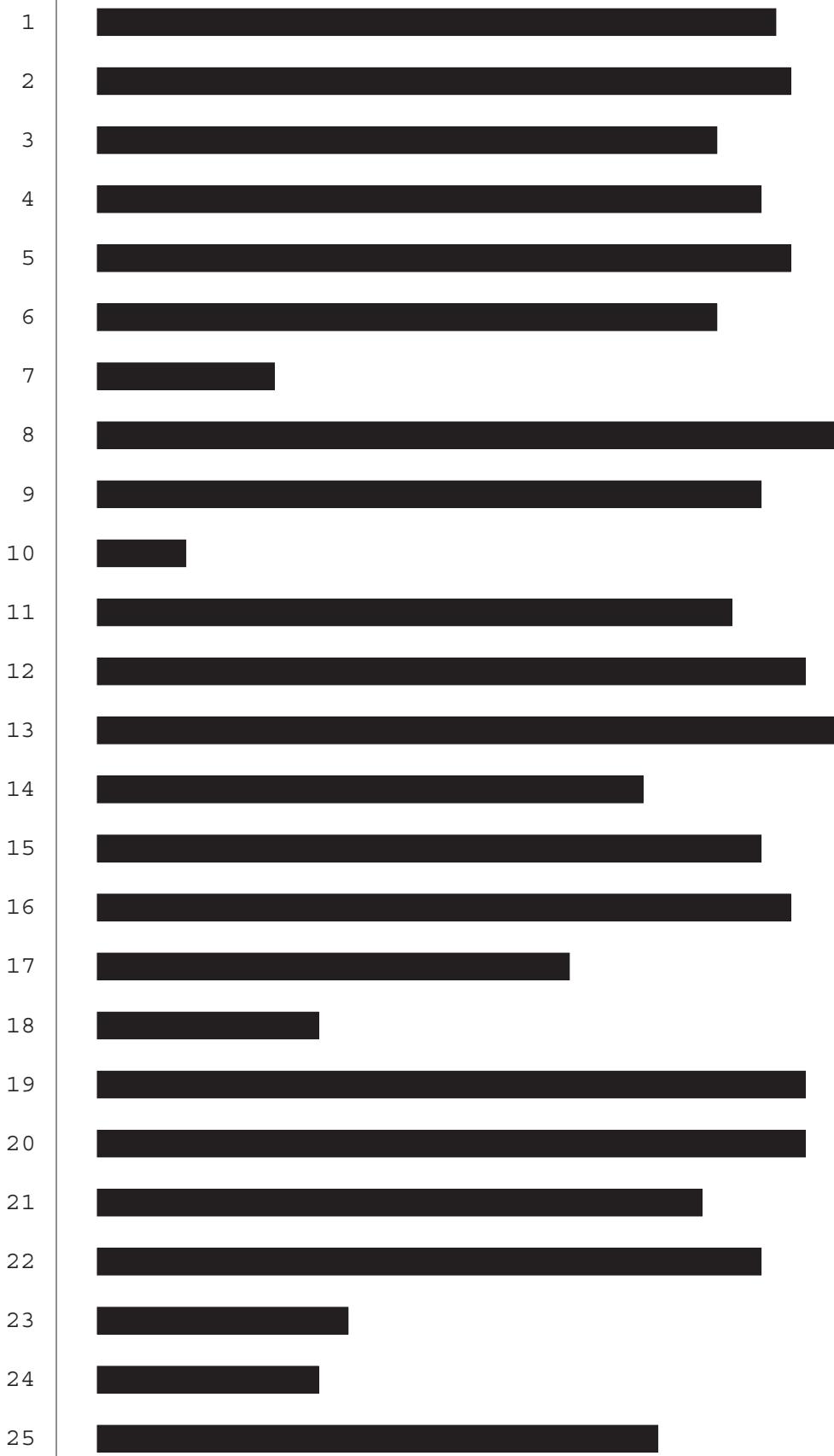


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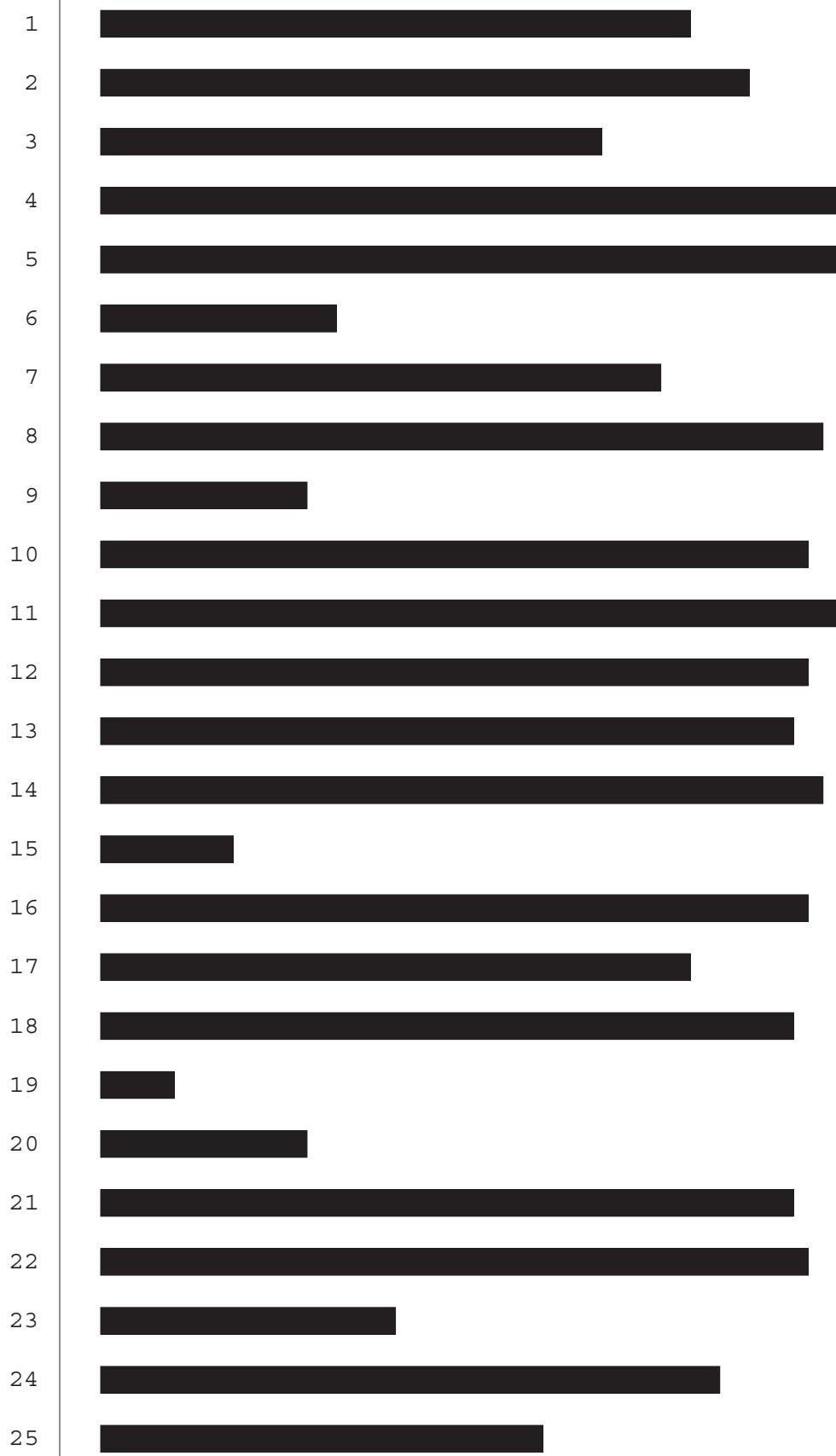
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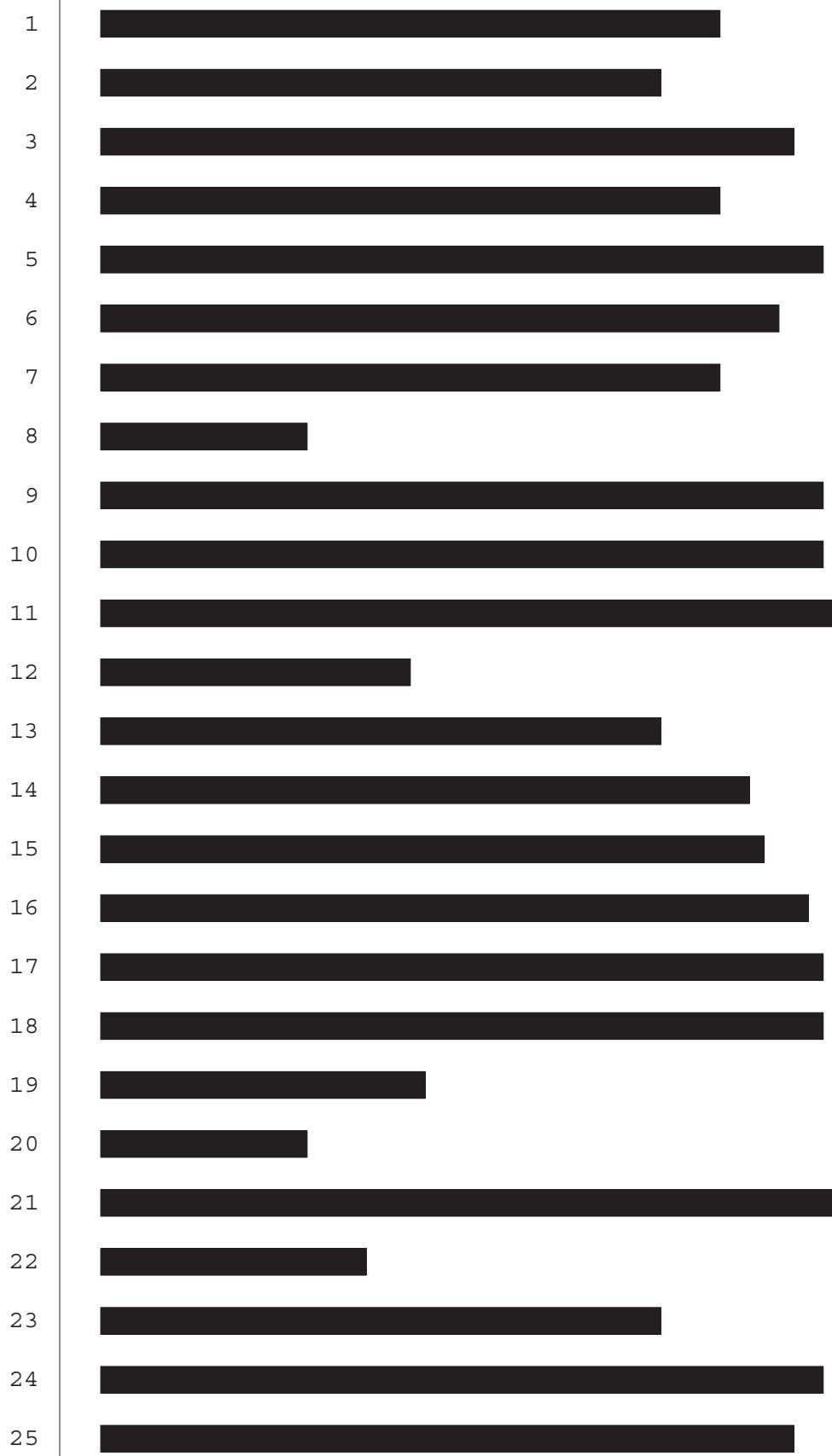
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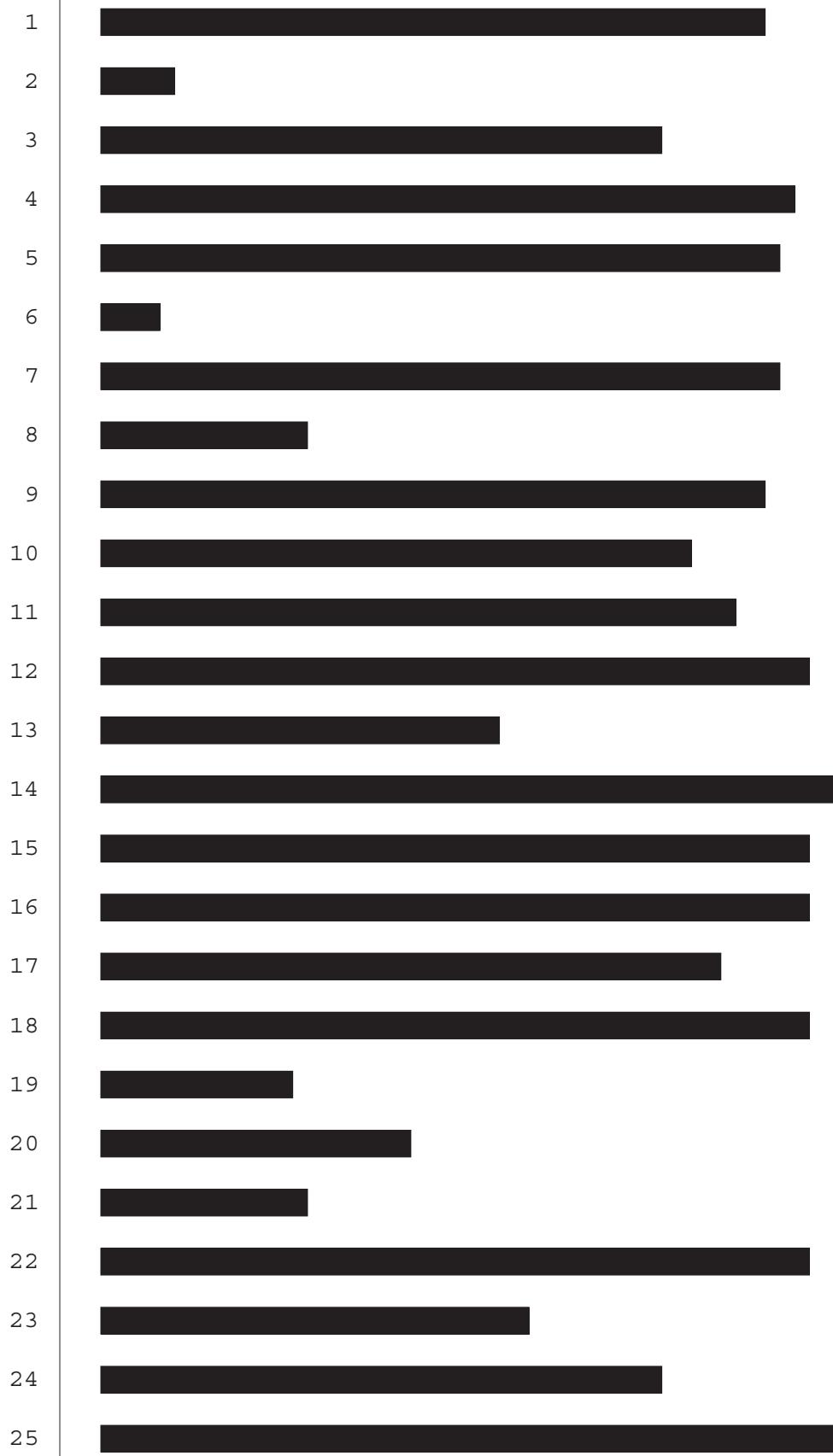
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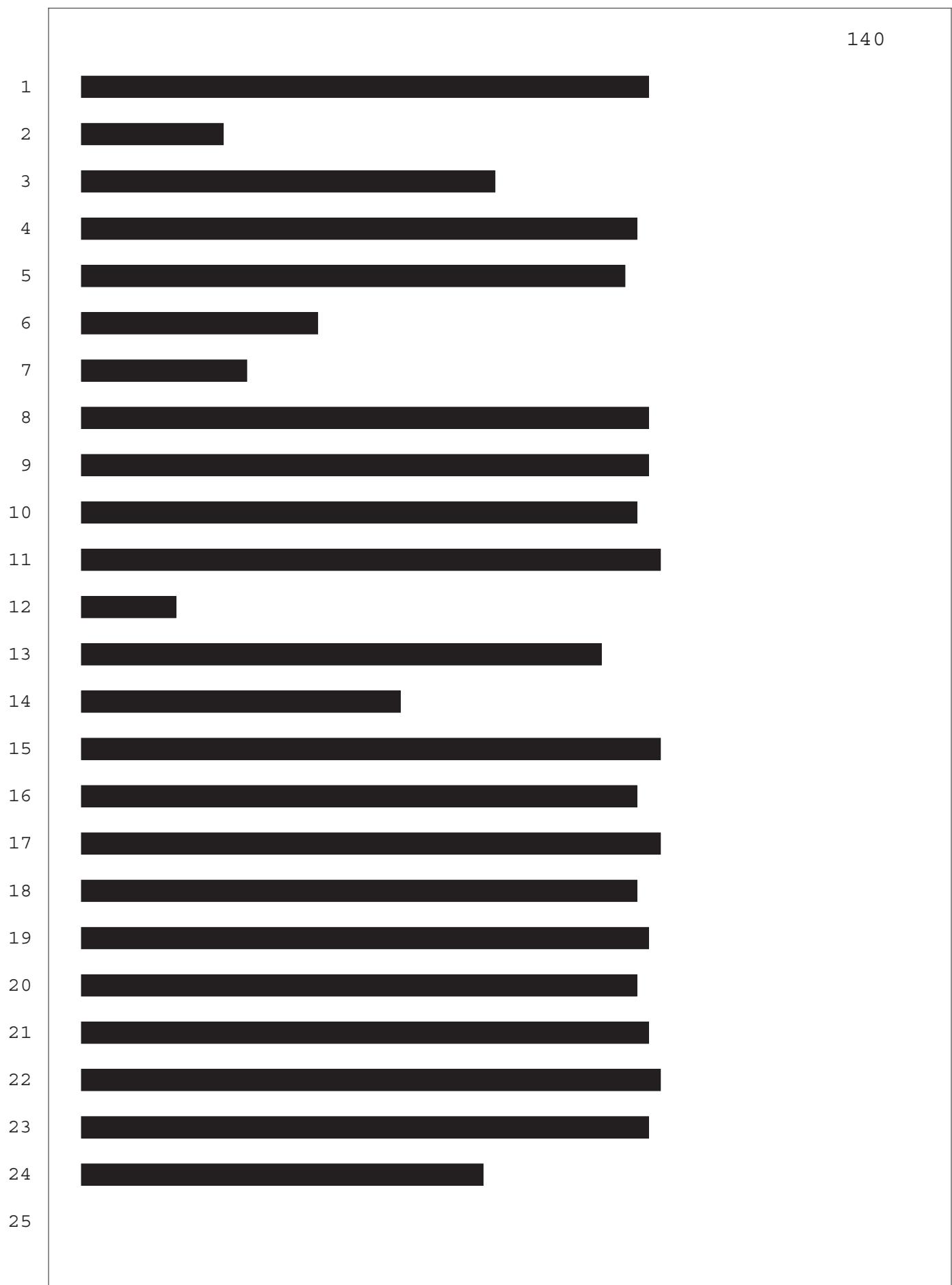


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1 BY MR. HUDSON:

2 Q. Well, here you can see on the first page
3 of his question he's talking about question one in
4 this questionnaire, "Company has a suspicious
5 order monitoring program which complies with 21
6 CFR 1301.74(b) for controlled substances"; right?

7 A. Yes.

8 Q. Do you think there's any relationship
9 between that and Mr. Millward's statement above
10 that we need to lock down an SOM SOP ASAP?

11 A. I honestly don't know. These things are
12 not in my daily practice. I don't -- I'm not
13 familiar with these codes.

14 Q. Do you know why you were copied on this
15 email?

16 A. No, but I can guess, you know. Because
17 it was a common practice that people would copy
18 the operators. It's more of an FYI so if
19 something were to change. If he's talking about a
20 procedure here that needs to be changed, you can
21 almost assume that there's going to be an
22 operating step that needs to happen to make sure
23 that procedure happens. I think it's more of a
24 heads up type of thing.

25 Q. Well, do you know as you sit here today

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1 looking at these documents whether or not Giant
2 Eagle had a written suspicious order monitoring
3 policy in place at this time in January of 2014?

4 A. For the Sudafed drug that he's talking
5 about there?

6 Q. No, just in general, suspicious order
7 monitoring program as a whole, in other words,
8 written policies.

9 A. We had written policies. My definition
10 of suspicious monitoring though is inclusive of
11 everything within the practices and for the
12 pharmacy. So my answer would be yes.

13 Q. This question says, "Company has a
14 suspicious order monitoring program which complies
15 with 21 CFR 1301.74 (b)"; right?

16 A. I don't know what that's referring to.
17 I'm sorry. I'm just not familiar with this thing.

18 Q. So today everything you've testified
19 about, any written policies or procedures that
20 existed at Giant Eagle, you don't know one way or
21 the other whether or not those are suspicious
22 order monitoring programs that would add to
23 compliance with 21 CFR 1301.74 (b)?

24 MR. KOBRIN: Object to form. Misstates
25 the testimony and the evidence.

1 THE WITNESS: What I'm saying is I'm not
2 familiar with what -- if you said it earlier, I
3 apologize. I don't know what 21 CFR 1301.74 (b)
4 is. I don't know what it's referring to.

5 BY MR. HUDSON:

6 Q. If you go back to the prior exhibit, the
7 exhibit you just had?

8 A. This thing from Anda?

9 Q. You got it exactly. And you go back to
10 Bates 4413, if you compare Exhibit 9, which is
11 this Anda description; right? And see it makes
12 reference to 1301.74 (b)? And then we compare that
13 to Exhibit 11, and they're also talking about a
14 suspicious order monitoring program which complies
15 with 21 CFR 1301.74 (b); right?

16 MR. KOBIN: Object to form. I just
17 want to clarify for the record that this is not an
18 Anda presentation. Some other third party
19 presented it at the Anda conference that the
20 witness has said he doesn't know anything about.

21 BY MR. HUDSON:

22 Q. It's actually a presentation by Mike
23 Mapes, chief compliance officer of Assured RX
24 Services, and Robert DelVecchio, chief executive
25 officer of Assured RX Services.

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1 If you go back and you compare these two, it
2 seems like in the industry there's a fair amount
3 of talk of putting a suspicious order monitoring
4 program in place; right?

5 MR. KOBRIN: Object to form.

6 THE WITNESS: I still want to point out
7 though on this form, it says other security
8 controls for nonpractitioners. I'm saying it's
9 because I was on the practitioner side of how
10 these things relate, that's why I'm not as
11 familiar with these as someone who would be
12 connected.

13 BY MR. HUDSON:

14 Q. No. I appreciate that. I guess that's
15 what I'm trying to get at. You've testified today
16 about policies or procedures that you were aware
17 of that existed at the retail pharmacy level;
18 right?

19 A. Right.

20 Q. So what I'm focused in on is policies or
21 procedures that existed at the nonpractitioner
22 level, meaning the manufacturer or distributor
23 level.

24 So my question is: Can you say as you sit
25 here today whether or not Mr. Millward's email

1 here in January of 2014 that you're copied on is
2 indicating that Giant Eagle needed to create a
3 suspicious order monitoring program to comply with
4 1301.74?

5 MR. KOBRIN: Object to form.

6 THE WITNESS: No, I can't say that.

7 What he says here is as it relates to an
8 over-the-counter drug, he has a question regarding
9 to that referenced section.

10 BY MR. HUDSON:

11 Q. He says in his email, "We need lock down
12 an SOM SOP ASAP"; right?

13 A. Yeah, specific to Sudafed,
14 over-the-counter drug.

15 Q. Well, how do you know that, that it's
16 specific to Sudafed?

17 A. Because he says we are reporting PSE,
18 which is Sudafed (a listed chemical) sales from
19 HPC to the stores monthly before he makes that
20 statement.

21 Q. But down below can we agree the
22 questionnaire is asking more broadly about --
23 number four says, "Please provide a copy of your
24 suspicious order monitoring program SOP or Summary
25 of Program."

1 A. I don't know what this document is.

2 What are these questions? This SOM and
3 anti-diversion program piece, I just don't know
4 what this is.

5 Q. That's what I'm getting at, is whether
6 you're able to say as you sit here today whether
7 or not Giant Eagle had written policies that were
8 specifically aimed at meeting these requirements
9 of 1301.74(b).

10 MR. KOBRIN: Object to form.

11 THE WITNESS: When you asked me -- to me
12 you're asking about a difference between a policy
13 that's of a distributor versus the pharmacy, and
14 I'm saying that it's the same company distributing
15 to itself. So by definition, any and all of our
16 suspicious -- whether diversion related measures
17 that we had in place are going to be part of the
18 suspicious monitoring system, to my opinion.

19 BY MR. HUDSON:

20 Q. Is there anything as you sit here today,
21 any manual or anything in writing?

22 A. Everything that we have, our dispensing
23 procedures, our documentation tracking, our
24 requirements in training that we do with
25 technicians, all our procedures are going to be

1 part of that.

2 Q. Those are all geared towards identifying
3 unusually large orders of controlled substances?

4 A. That's not what it's asking on here.
5 It's asking about if there's suspicious
6 order monitoring.

7 Q. What is a suspicious order?

8 MR. KOBRIN: Object to form.

9 THE WITNESS: I don't have a definition
10 of suspicious order. If there are orders that
11 require, you know, a go look-see or further
12 information, we were going to go look and see.

13 BY MR. HUDSON:

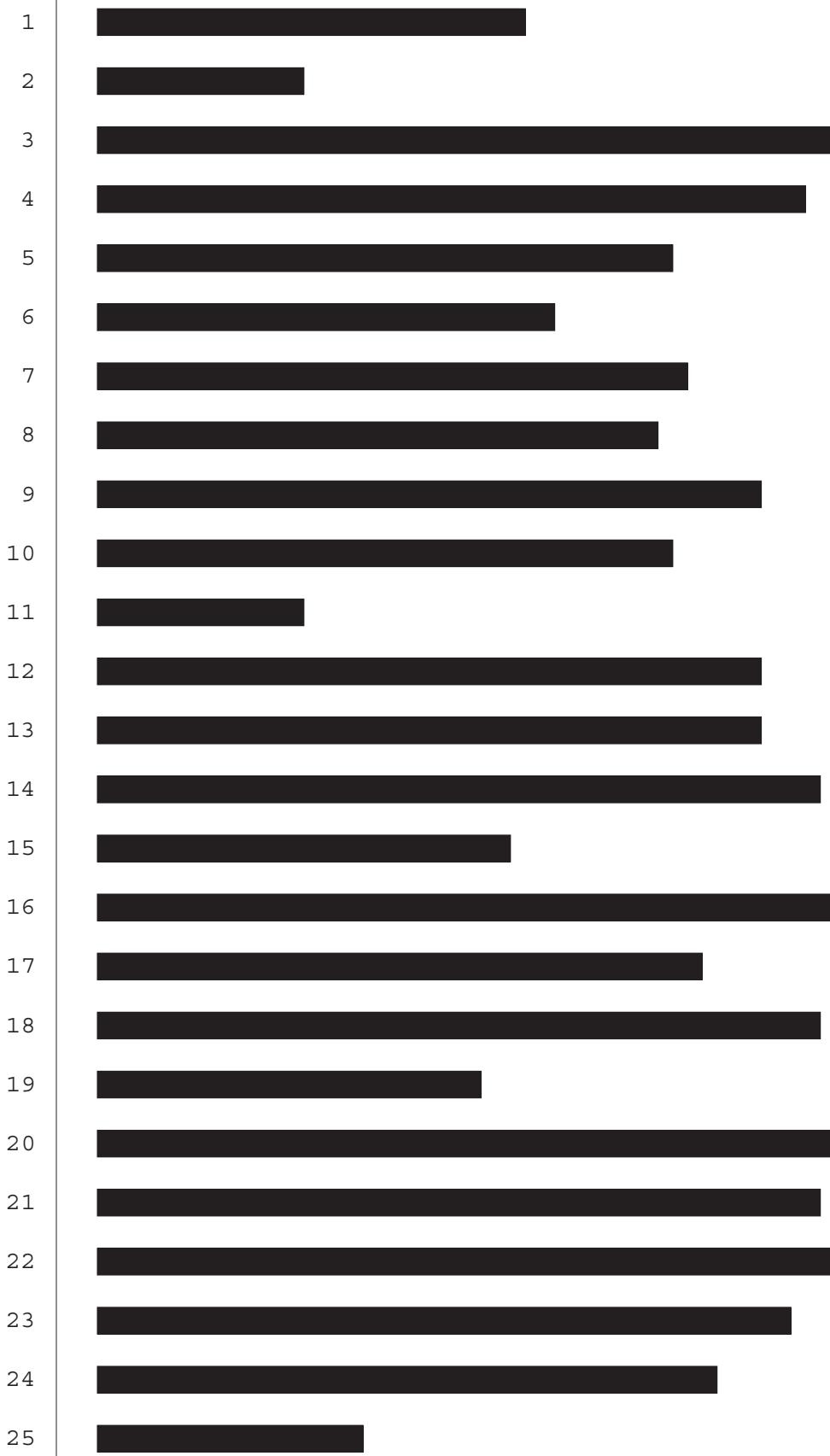
14 Q. Well, what does the regulation say about
15 a suspicious order?

16 MR. KOBRIN: Object to form. If you
17 want to show him the regulation, but I don't think
18 he should be expected to know that or should
19 testify to it. I'm going to say don't answer
20 that.

21 MR. HUDSON: Are you instructing him not
22 to answer?

23 MR. KOBRIN: I think you should clarify
24 or tell him what you're doing. I mean, you're
25 asking him to tell you about legal regulations

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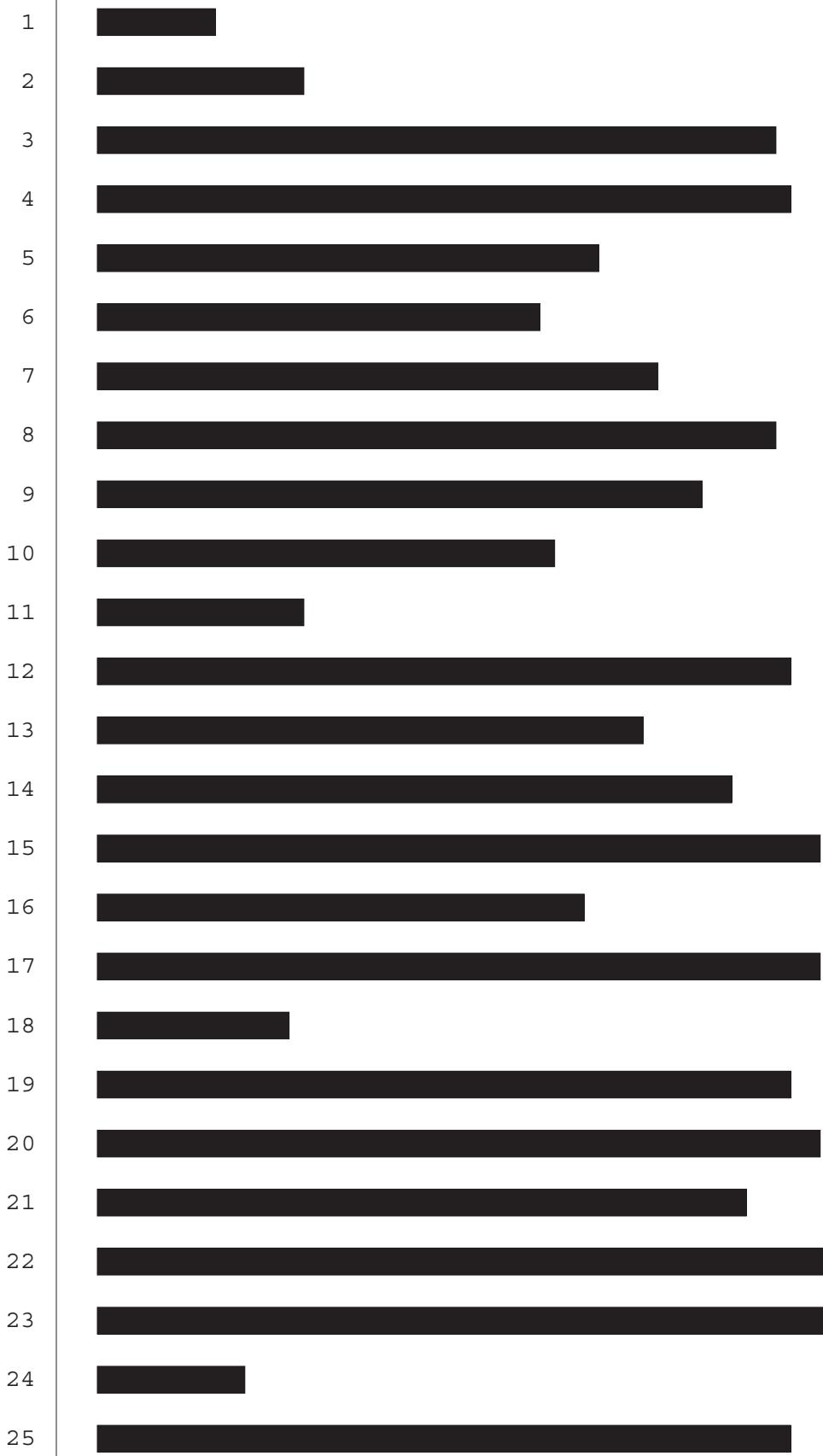


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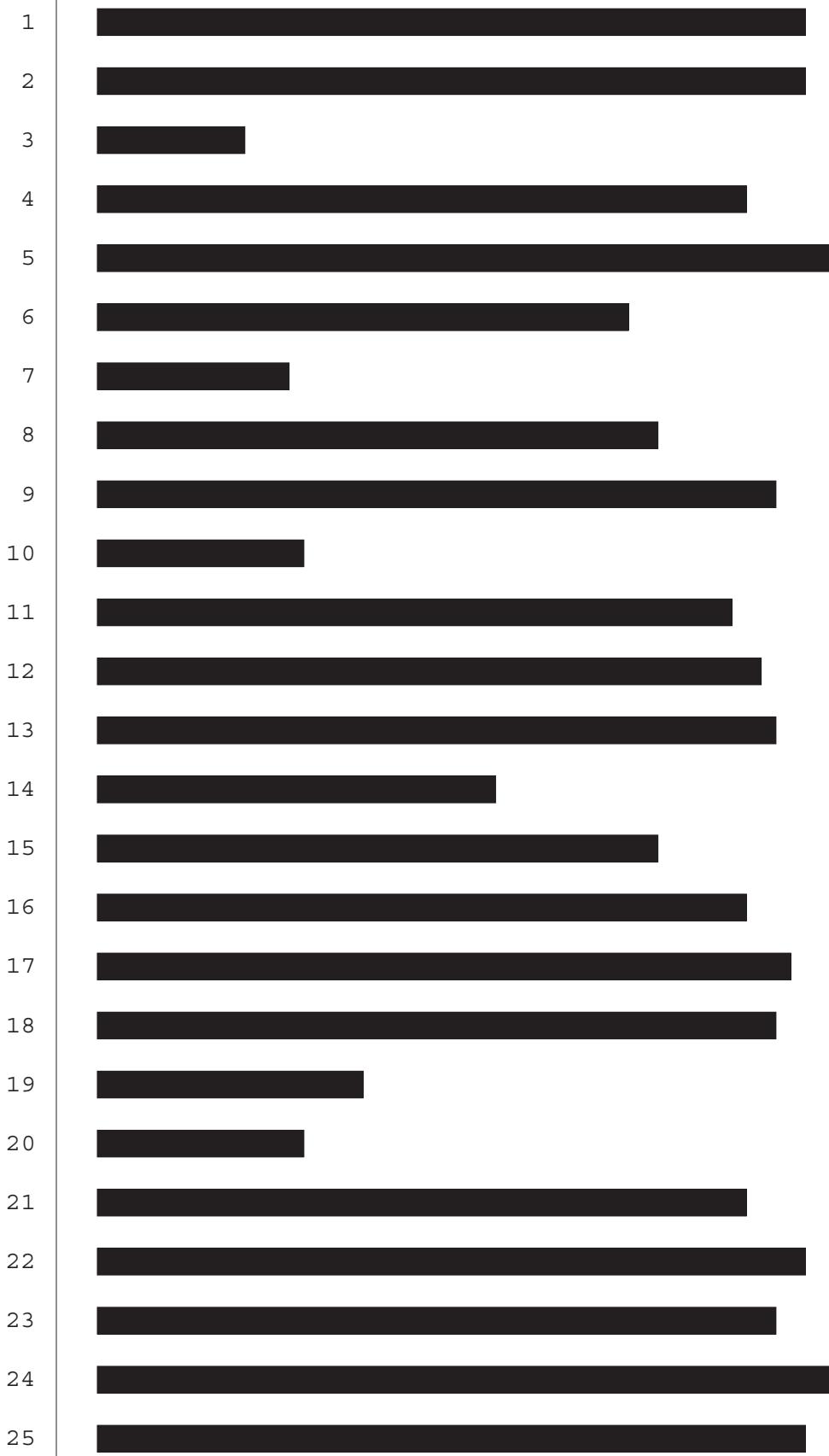
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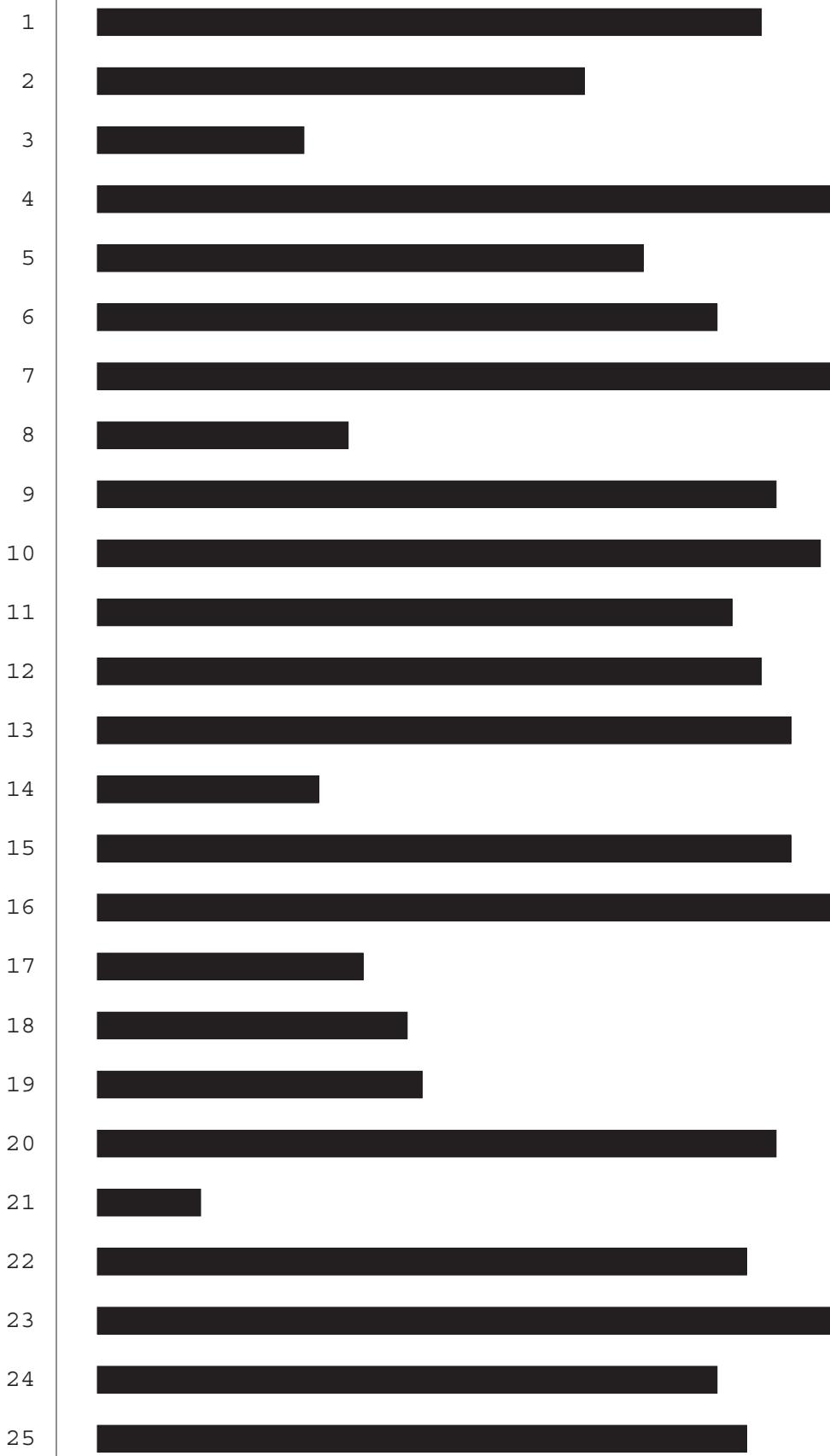
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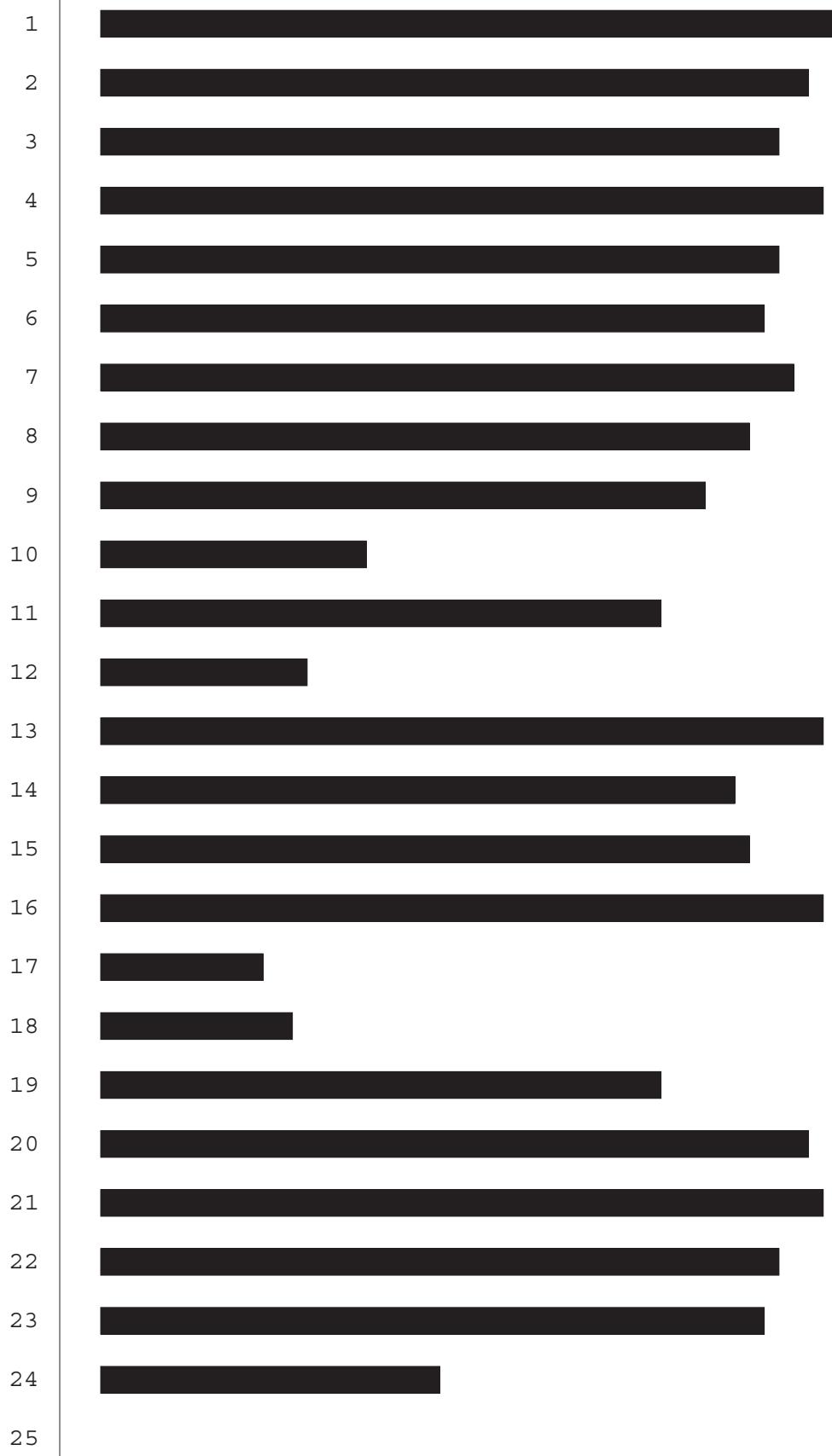
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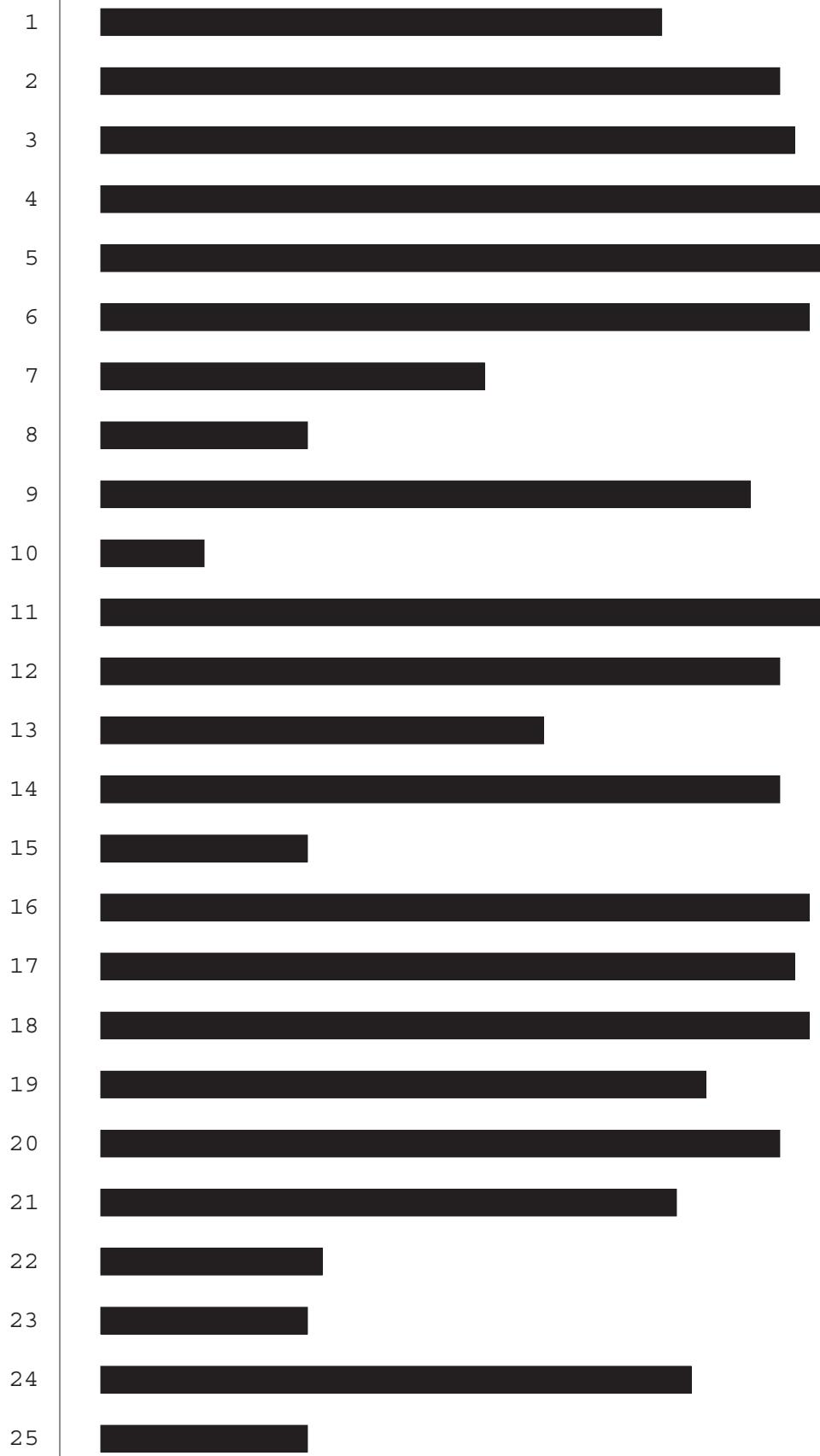
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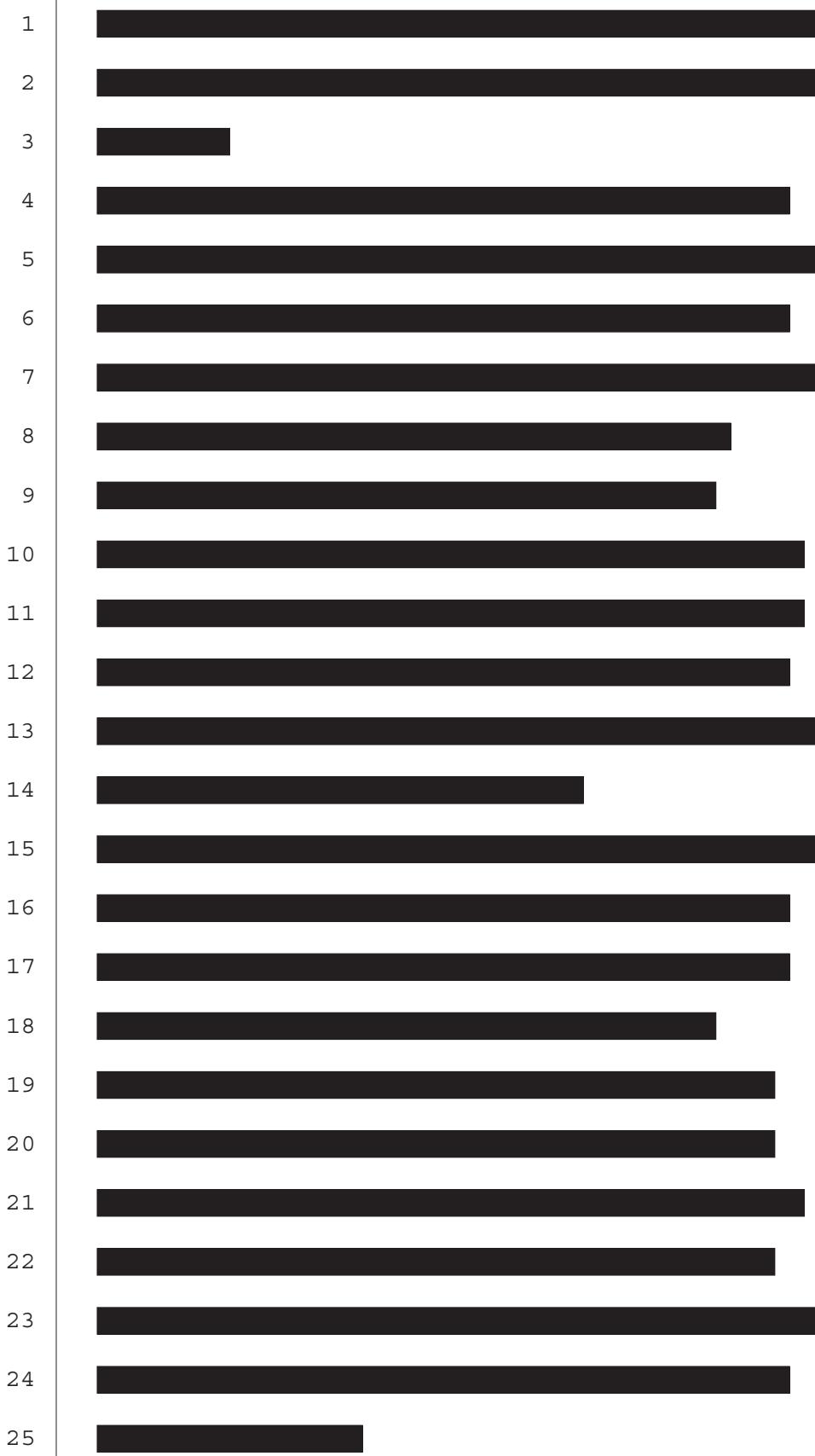
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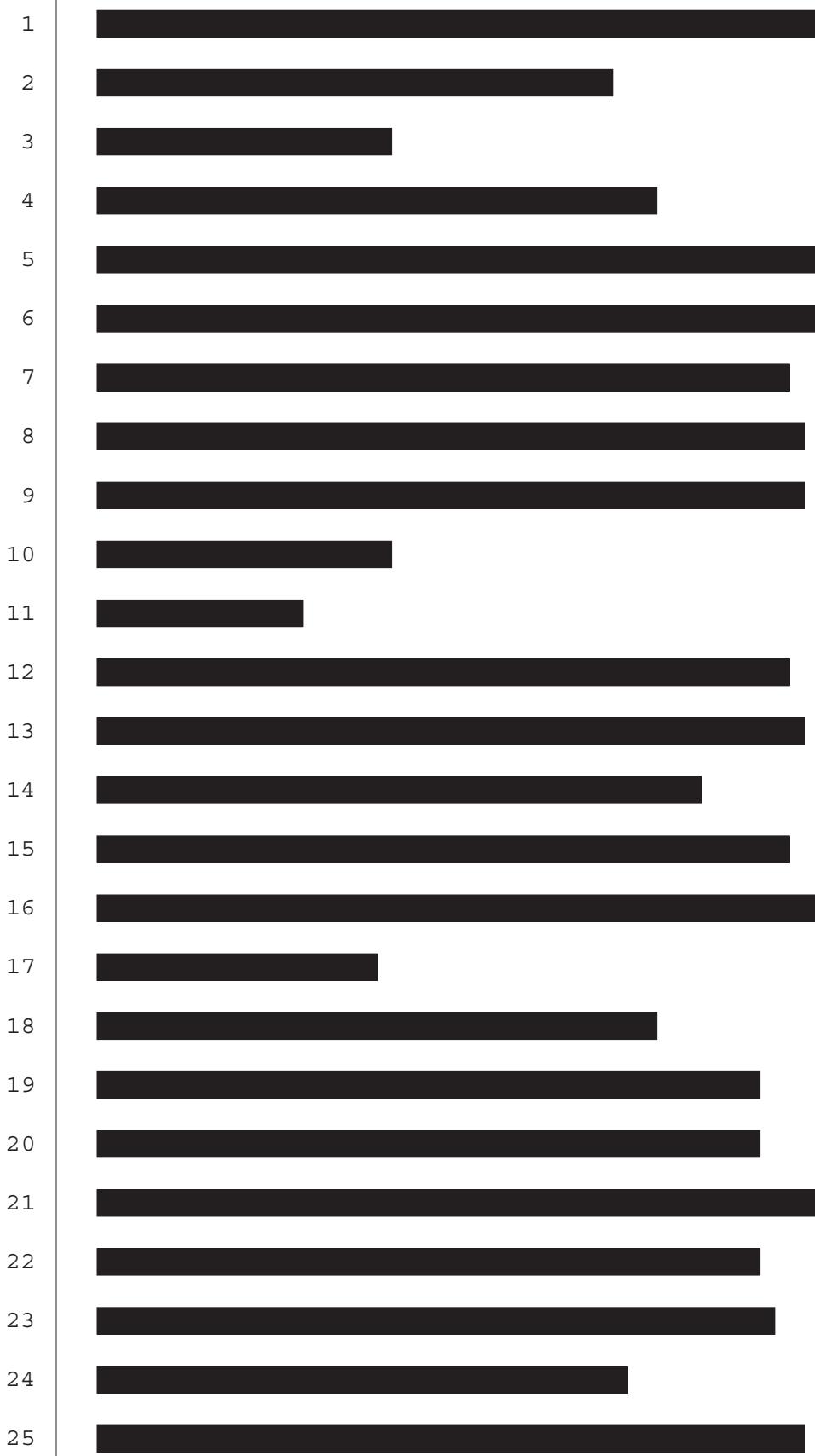
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6 [REDACTED]

7 [REDACTED]

8 MR. HUDSON: Let's take a break.

9 THE VIDEOGRAPHER: 11:54 we're off the

10 video record.

11 (Recess from 11:54 a.m. to 12:36 p.m.)

12 THE VIDEOGRAPHER: 12:36 we're on the

13 video record.

14 EXAMINATION

15 BY MR. BARTON:

16 Q. Mr. Mollica, we met at the beginning of
17 the deposition. My name is Eric Barton here with
18 Mr. Hudson representing the plaintiffs. I just
19 have some follow-up questions for you on a few of
20 the topics that have already been touched on this
21 morning, if that's all right.

22 I understand from your testimony at the
23 beginning of the deposition about your work
24 history that you were in -- I think you just
25 described it as a leadership role in the Cleveland

1 area for about eight months before you became the
2 director of operations, pharmacy operations for
3 Giant Eagle; is that right?

4 A. Yes. The titles changed. It used to be
5 called pharmacy specialist. Now it's called
6 pharmacy district leader. That was the role.

7 Q. That was going to be my first question,
8 what was your title, but it was either pharmacy
9 specialist or pharmacy district leader?

10 A. Yeah. I can't remember because they
11 changed it somewhere in that era.

12 Q. And this was, I think, in about 2006,
13 about then?

14 A. That's correct.

15 Q. In that role, whatever your title, in
16 that role do I understand correctly that you would
17 have had some supervisory responsibility for some
18 number of stores in your geographic area, which
19 was the Cleveland area at that time?

20 A. That's right.

21 Q. Can you just give us a little more
22 detail about what your area or territory was at
23 that period of time in the Cleveland area for
24 those eight months that you held that position?

25 A. Yeah, but please understand they changed

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1 my territory so many different times. I've had so
2 many different ones. I may not be a hundred
3 percent accurate.

4 But it's my recollection the ones in that
5 particular area were on the west side, like in the
6 suburban areas. I didn't have like inner city
7 ones. But the ones that were west of Cleveland
8 and maybe southwest.

9 Q. How many stores in that role, and I
10 understand that may have varied, too --

11 A. Right.

12 Q. -- with what you said, but approximately
13 how many stores would you have had supervisory
14 responsibility for?

15 A. It would have been some number between
16 20 and 30. They changed the size of the
17 territories over time, too. It's in that range
18 somewhere. At that particular time, too, even
19 though it was, quote-unquote, on paper for eight
20 months, there was a big acquisition going on at
21 that time, and I was helping with the acquisition.

22 So I was -- they had interim leaders
23 overseeing my, quote-unquote, stores while I was
24 working on the acquisition piece, too.

25 Q. Given the number of stores and where you

1 were, do you believe that you did have supervisory
2 responsibility during that period of time in the
3 position of pharmacy specialist or pharmacy
4 district leader for Giant Eagle retail pharmacies
5 in Cuyahoga or Summit counties?

6 MR. BARNES: Object to form. Can you
7 define what you mean by supervisory?

8 MR. BARTON: Whatever he would say his
9 roles were as pharmacy specialist or pharmacy
10 district leader.

11 THE WITNESS: I honestly don't know the
12 counties. If you show me a map, I'd probably be
13 able to -- I don't know which counties. I'm from
14 Pennsylvania originally, not Ohio. So I'm not
15 sure what the county names are. If you had store
16 specific -- I didn't have any of the ones that
17 were like in Cleveland proper, if that's what
18 you're asking, at that time.

19 It's my recollection that I had -- at one
20 time I had stores that were east of Cleveland and
21 more like going into Youngstown. But at that
22 time, it's my recollection it was the ones that
23 were kind of further out there in the west. I
24 didn't have the city stores.

25 Is that what those counties correspond to?

1 BY MR. BARTON:

2 Q. That's fine.

3 A. In south, like Medina area, like going
4 into Akron, you know, the ones that are kind of on
5 the outskirts. I didn't have the...

6 BY MR. BARTON:

7 Q. Let me ask a general question about the
8 Giant Eagle retail pharmacies that we're talking
9 about here.

10 Is it accurate for us to understand that
11 these retail pharmacies were always connected to
12 or are a part of Giant Eagle supermarket grocery
13 stores?

14 A. Yes. Over the years, not in that
15 particular area, over the years there were onesie
16 twosie things where a Giant Eagle would be in an
17 independently-owned grocery store that Giant Eagle
18 distributed groceries to, but they were always
19 Giant Eagle pharmacies.

20 There were none in -- I don't think there
21 were any -- after the acquisition in Cleveland,
22 there were two stores -- I don't even remember the
23 names of them -- that we had Giant Eagle
24 pharmacies in. I think there were two of them in
25 the Cleveland market that we ran Giant Eagle

1 pharmacies inside of the other grocery -- the
2 independent grocery store banner. But then they
3 were closed in some short time afterwards. But
4 for the most part, yes.

5 Q. That's helpful. So there were rare
6 examples, if I understand correctly, there were a
7 couple of rare examples that didn't last where a
8 Giant Eagle pharmacy that you or Giant Eagle
9 operations people had responsibility for the
10 operations of those pharmacies, but a couple of
11 them may have been physically located for a time
12 in a different grocery store, not a Giant Eagle
13 grocery store?

14 A. Correct. I do want to note as my
15 recollection, too, after the acquisition, my
16 territory at least for a couple of months -- I
17 don't remember the exact dates -- were just to
18 help the pharmacies that we just acquired. Some
19 of those may have been in those counties. But,
20 like I said, I'm not sure what the county borders
21 are for those.

22 MR. BARNES: Eric, when you say
23 different, you mean did they run the Giant Eagle
24 banner that they were independent or did they run
25 some other banner?

1 MR. BARTON: Yeah. Let me ask that
2 question just to flesh it out. I realize we're
3 talking about exceptions, but we might as well
4 understand all the alternatives here.

5 BY MR. BARTON:

6 Q. In the instances where Giant Eagle owned
7 and operated or purchased and operated a pharmacy
8 within a grocery store that had a different
9 banner, a different brand, not Giant Eagle as the
10 supermarket or grocery store --

11 MR. BARNES: If that occurred.

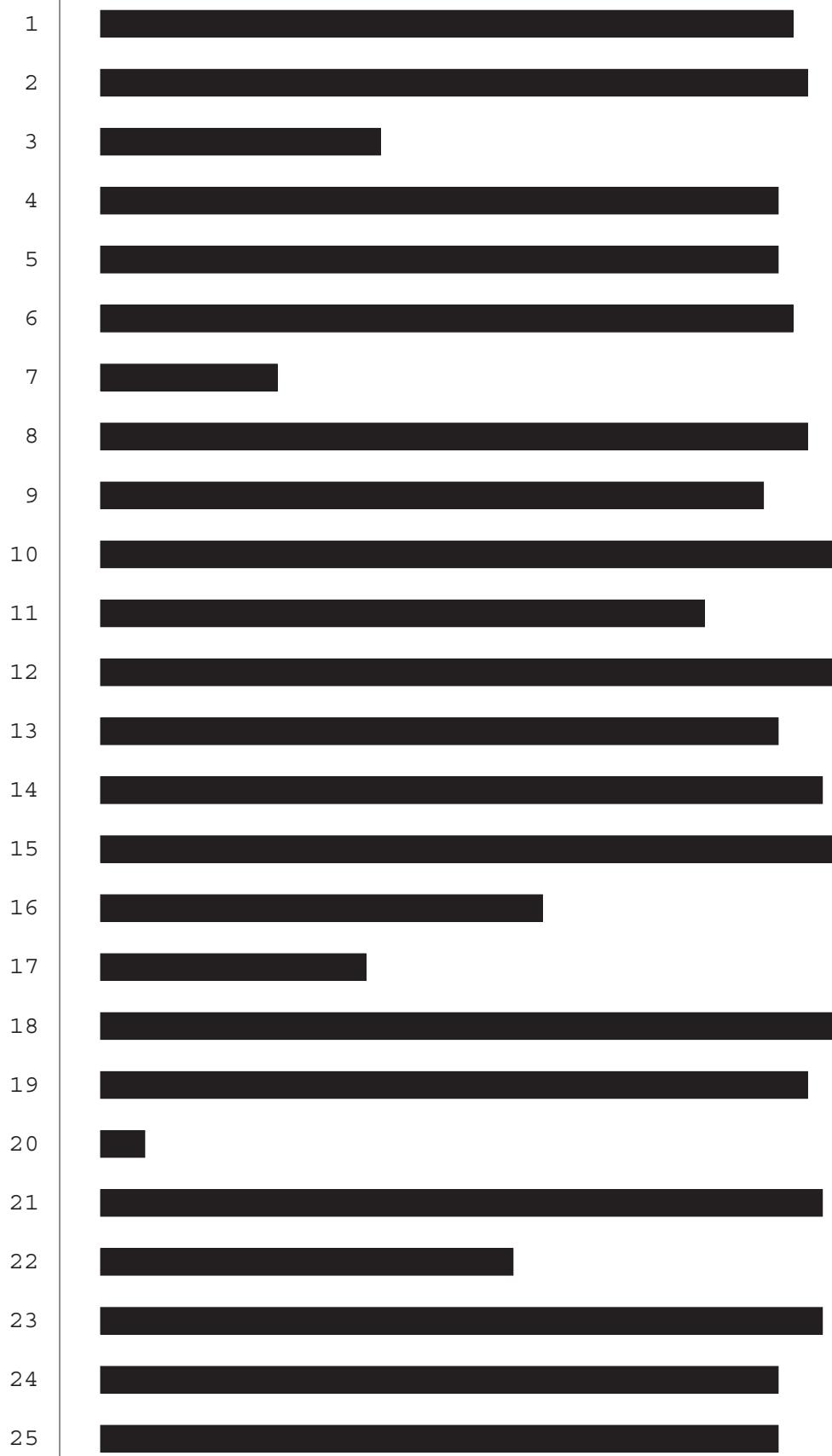
12 BY MR. BARTON:

13 Q. In those instances and if that occurred,
14 did the pharmacy inside that grocery store have
15 kind of clear Giant Eagle signage, branding?

16 A. Yes, yes. They were branded, licensed.
17 Even the uniforms were the same. The bottle
18 labels had Giant Eagle Pharmacy on them.

19 [REDACTED]
20 [REDACTED]
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8 Q. I'm going to mark a couple of things as
9 exhibits. I'm going to hand you 13 and 14 here.

10 (HBC-Mollica Exhibits 13 - 14 were marked.)

11 (Witness reviewed the exhibit.)

12 BY MR. BARTON:

13 Q. Mr. Mollica, I've handed you two
14 documents, Exhibits 13 and 14. Do you see that?

15 A. Yes.

16 Q. And I'll just represent to you that
17 Exhibit 13 is a printout of the Ohio
18 Administrative Code Section 4729-9-05, and this is
19 the version that was in effect in 2009 through its
20 next amendment, which I believe was in 2011 or
21 '12, although it wasn't a major amendment.

22 But this is during the time that you were in
23 the position of director of operations, pharmacy
24 operations for Giant Eagle; correct?

25 A. Yes.

1 Q. And then Exhibit 14 is, likewise, a
2 printout of the Ohio Administrative Code, and it's
3 Section 4729-9-11, also the version in effect in
4 2009 through at least 2011 until it was next
5 amended. Do you see that?

6 A. Yes.

7 Q. So these two documents are part of the
8 pharmacy regulations applicable to pharmacies in
9 the state of Ohio. Do you agree with that?

10 A. Yeah. That's what it appears to be,
11 yes.

12 Q. And these are administered by in Ohio I
13 think the Ohio State Board of Pharmacy; correct?

14 A. Yeah. It would be the Ohio state board.

15 Q. These particular ones, looking at
16 Exhibit 13, which is Section 4729-9-05, that's
17 security requirements for dangerous drugs. Do you
18 agree with that?

19 MR. BARNES: Are you reading that from
20 somewhere?

21 MR. BARTON: No. I'm just
22 characterizing it.

23 BY MR. BARTON:

24 Q. The title is Security Requirements.
25 That's the title of this particular regulation?

1 A. Yeah.

2 Q. And it's within the chapter applicable
3 to dangerous drugs, do you see there up above?
4 That's what this purports to be addressing; do you
5 agree?

6 A. I mean, I agree that 4729-9-05 is
7 security requirements.

8 Q. And so in subsection (A) -- I'm not
9 going to read all of these, but we're just seeing
10 what these are. In subsection (A), the very first
11 sentence says, "All registrants shall provide
12 effective and approved controls and procedures to
13 deter and detect theft and diversion of dangerous
14 drugs."

15 Did I read that correctly?

16 A. Yes.

17 Q. All registrants, using that word in
18 these regulations, would you assume that that
19 refers in this instance to pharmacies if this is
20 regulating pharmacies?

21 MR. BARNES: Object to form. Don't
22 speculate.

23 THE WITNESS: I'm not even sure what
24 you're asking me. I can verify that's what it
25 says on the piece of paper the way you read it.

1 BY MR. BARTON:

2 Q. Well, do you believe that in the State
3 of Ohio, all pharmacies were required to have
4 effective and approved controls and procedures to
5 deter and detect theft and diversion of dangerous
6 drugs?

7 A. Sure.

8 Q. And in subsection (B), it says that,
9 "Substantial compliance with the standards set
10 forth in 4729-9-11 of the Administrative Code may
11 be deemed sufficient by the State Board of
12 Pharmacy after evaluation of the overall security
13 system and needs of the applicant or registrant."

14 Did I read that correctly?

15 A. Yes.

16 Q. So that's Exhibit 14, is the section
17 that's referenced there. Do you see that?
18 Exhibit 14 is 4729-9-11.

19 A. Yes.

20 Q. I want you to -- in the second sentence
21 of subsection (B) back on Exhibit 13, it says, "In
22 evaluating the overall security system of a
23 registrant or applicant, the State Board of
24 Pharmacy may consider any of the following factors
25 as they deem relevant for strict compliance with

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1 security requirements."

2 Do you see that?

3 A. Yes.

4 Q. First of all, strict compliance with
5 security requirements, do you believe that that is
6 what Ohio, the State of Ohio expected for its
7 retail pharmacies?

8 MR. BARNES: Object to form.

9 THE WITNESS: I don't know what -- what
10 it says here is that they considered the following
11 as they deem relevant. So how they deemed these
12 relevant, I can't speak for how the Board would in
13 those particular situations.

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

1 BY MR. BARTON:

2 Q. So one of the factors that the state
3 Board of Pharmacy may deem relevant is down in
4 Section 14 at the bottom of the page on
5 Exhibit 13. It's "Adequacy of the registrant's or
6 applicant's system for monitoring the receipt,
7 manufacture, distribution and disposition of
8 dangerous drugs in its operation."

9 Do you see that?

10 A. Yes.

11 Q. So do you believe the State of Ohio
12 expected pharmacies to have a system for
13 monitoring the receipt of dangerous drugs?

14 MR. BARNES: Object to form. Lack of
15 relevance.

16 THE WITNESS: It says -- it states here
17 that one of the requirements that they may deem
18 relevant is adequacy of the registrant's or
19 applicant's system for monitoring the receipt.

20 BY MR. BARTON:

21 Q. And if the registrant in the State of
22 Ohio was a registrant or applicant that
23 distributed dangerous drugs, likewise, you believe
24 the State of Ohio expected them to have a system
25 for monitoring the distribution of the dangerous

1 drugs in its operation; correct?

2 MR. BARNES: Object to form. Misstates
3 the very document you're showing him.

4 THE WITNESS: What I see here is there's
5 14 examples of what they may deem relevant.

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 Q. If you turn the page to subsection (D),
22 that says, "Any registrant or applicant" -- sorry.
23 I'll let you get there. I'm on the second page
24 toward the top.

25 It says, "Any registrant or applicant

1 desiring to determine whether a proposed security
2 system substantially complies with or is the
3 structural equivalent of the requirements set
4 forth in Rule 4729-9-11 of the Administrative Code
5 may submit any plans, blueprints, sketches or
6 other materials regarding the proposed security
7 system to the State Board of Pharmacy."

8 Do you see that?

9 A. Yes.

10 Q. Do you know whether you ever did that or
11 anyone else from Giant Eagle ever submitted any
12 proposed plans for a security system to the State
13 of Ohio?

14 A. In Ohio not only did you have to give
15 the blueprint, but they did a physical inspection
16 of the security systems.

17 Q. And that was part of opening a new
18 pharmacy, for example?

19 A. Yes. And they did routine inspections
20 after they were open as well.

21 Q. Did that include submitting policies and
22 procedures to Ohio, or are you interpreting that
23 as just referring to the physical structure
24 itself?

25 A. That's what I do believe they are

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1 referring to here. That was the requirement.

2 They have -- in other parts of the Ohio Boards,
3 there are requirements for what you have to do in
4 order to open a pharmacy, and this piece is
5 included in there.

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

1 Q. Go back to -- let's go back to
2 Exhibit 5, which was the Ohio State Board of
3 Pharmacy proceedings against one particular
4 pharmacy in Ohio.

5 MR. BARNES: This is the one that's
6 outside Case Track One jurisdiction?

7 MR. BARTON: It's Exhibit 5, P-GEN-111.

8 THE WITNESS: I have it here.

9 MR. BARNES: I think we have a
10 continuing objection that this does not relate to
11 Case Track One jurisdiction.

12 MR. BARTON: The continuing objection is
13 fine.

14 BY MR. BARTON:

15 Q. So this a Giant Eagle #4098 in Chardon,
16 Ohio; correct?

17 A. Correct.

18 Q. And do you know where Chardon is?

19 A. Yeah. I think it's -- jeez, now I can't
20 remember. It's a suburb of the Cleveland area. I
21 can't recall if it's on the east or the west side.

22 Q. I'll represent to you I believe it's on
23 the east side.

24 A. I was just going to say my gut is
25 telling me east side.

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1 Q. Do you know what county it's in?

2 A. No, no.

3 Q. Do you recall there being a Geauga

4 County? I don't know if I say it right.

5 A. No. I know that there's -- I know
6 there's a part of Ohio called Geauga, but I don't
7 know if it's a county or town.

8 Q. Well, I'll represent that Chardon is in
9 that county, whether I pronounce it correctly or
10 not, and that county borders Cuyahoga County.
11 It's adjacent to Cuyahoga County to the east.
12 It's the county directly east and adjacent to
13 Cuyahoga County.

14 A. That makes sense.

15 Q. Do you have any reason to disagree with
16 that?

17 A. No.

18 Q. The map will be what the map is.

19 A. The map is what the map is.

20 Q. There was some discussion of this, but I
21 just want to make it clear. You understand --
22 one, this did happen during the time you were
23 director of pharmacy operations for the company;
24 correct?

25 A. Yes.

1 Q. And you do understand that this
2 settlement agreement began and, in fact, it
3 recites that the state Board of Pharmacy was
4 charging that pharmacy with violating the
5 regulations that we just looked at. Do you
6 understand that?

7 A. No. Could you refer to that section
8 again?

9 Q. Yeah. If you look on the second page of
10 the part we're talking about, after the settlement
11 agreement, but the next page.

12 A. The next page after this one, that one?

13 Q. Yeah. That's the one.

14 If you look at the second whereas clause,
15 first of all, it says, whereas, on or about
16 July 14, 2011, pursuant to Chapter 119 of the Ohio
17 Revised Code, that Giant Eagle store was notified
18 of the allegations or charges against it, its
19 right to hearing, its rights in such hearing and
20 its right to submit contentions in writing.

21 Further, a hearing was scheduled and continued by
22 the Board, and the July 14, 2011 notice of
23 opportunity for hearing contains the following
24 allegations or charges.

25 Do you see that?

1 A. Yes.

2 Q. Number two is one of -- you understand
3 that number two then below is one of the
4 allegations or charges that was made by the state
5 Board of Pharmacy against this store?

6 A. Yes.

7 Q. And that is that Giant Eagle Pharmacy
8 #4098 did from May 1, 2009 through January 21,
9 2011 fail to provide effective and approved
10 controls and procedures to deter and detect theft
11 and diversion of dangerous drugs, to wit: The
12 following controlled substances and dangerous
13 drugs where stolen from the pharmacy, yet internal
14 control procedures failed to deter or detect the
15 theft; correct?

16 A. Yes. That's what it says.

17 Q. Then number three also describes the
18 same. When it carries onto the next page, it
19 actually specifically lists the drugs that were
20 admitted by a technician to a Board agent that
21 that list of drugs were diverted to her addicted
22 husband and also sold to someone else; right? Do
23 you understand that?

24 A. Correct.

25 Q. That are those are the facts being

1 alleged. And it lists the drugs. It then follows
2 by saying, such conduct is in violation of
3 4729-9-05 of the Ohio Administrative Code, which
4 is what we just looked at in Exhibit 13?

5 A. It says that after -- it says
6 allegations or charges.

7 Q. Right. Your point is this is an
8 allegation or a charge; correct?

9 A. Correct.

10 Q. By the State Board of Pharmacy against
11 this specific pharmacy, not just the technician,
12 but against the pharmacy for internal controls not
13 preventing or deferring this from happening;
14 correct?

15 A. Yes, for this instance, yes.

16 Q. Then it says in the next sentence below,
17 Giant Eagle #4098 neither admits nor denies the
18 allegations in that notice of opportunity for
19 hearing letter dated July 14, 2011; correct?

20 A. Yes.

21 Q. That speaks for itself. It neither
22 admitted or denied those allegations; correct?

23 A. Yeah. It basically says nothing. It
24 says neither, nor. So, yes.

25 [REDACTED]

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1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]

12 Q. One of the things that Giant Eagle 4098
13 agreed to do is listed in paragraph (A) there.
14 Giant Eagle #4098 agrees to adopt and implement
15 the policies as submitted to the Ohio State Board
16 of Pharmacy in its letter dated September 27,
17 2011. Do you see that?

18 A. Yes.

19 Q. And do you recall being a part of
20 reviewing or assisting in the preparation of that
21 letter to the Ohio State Board of Pharmacy?

22 A. I don't recall specifically, but my
23 feeling is, yes, I would have reviewed that
24 letter.

25 Q. As you sit here, do you know what

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1 policies that pharmacy agreed to adopt and
2 implement as part of the settlement agreement?

3 A. I don't recall that specifically. If
4 you let me look at them, I could try to
5 refamiliarize myself. That was eight years ago.
6 I don't remember specific to that incident.

7 Q. Would you agree that it's reasonable to
8 infer from Giant Eagle's #4098's agreement to
9 adopt and implement policies as part of this
10 settlement that those policies that it agreed to
11 adopt and implement would have been reasonable
12 policies?

13 MR. BARNES: Object.

14 THE WITNESS: If you could show me the
15 policies that they're referring to, I could answer
16 that more properly.

17 BY MR. BARTON:

18 Q. I'm asking a simpler question, which is:
19 Would you agree that what happened here is this
20 store wrote a letter to the State Board of
21 Pharmacy, and it agreed to adopt and implement
22 policies that were outlined in that letter? Do
23 you agree with that?

24 A. Yes.

25 Q. That was part of the settlement of this

1 whole thing; right?

2 A. Yeah. It states here that there were --
3 agreed to implement policies specific to the
4 incident that were included in this document or
5 along with this. I guess I'd have to familiarize
6 myself to be specific.

7 Q. It doesn't actually say agrees to adopt
8 and implement policies specific to this incident,
9 but the letters --

10 A. Do you not agree that they're specific
11 to this incident?

12 Q. No. I'm saying that we don't have the
13 letter, the September 27, 2011 letter. We'd like
14 to see it. We don't have that.

15 A. I don't have it either.

16 Q. But I'm just asking you -- I'm just
17 asking you: Do you believe that Giant Eagle #4098
18 as part of the settlement of this proposed to
19 adopt and implement reasonable procedures?

20 MR. BARNES: Object to form. Asking you
21 to speculate.

22 THE WITNESS: What I believe is that
23 Giant Eagle 4098 agreed to adopt and implement
24 policies that were specific to this incident as
25 related to this particular Board inquiry.

1 BY MR. BARTON:

2 Q. And do you believe the policies that it
3 proposed would have been reasonable policies?

4 MR. BARNES: Object to form.

5 THE WITNESS: I would think that makes
6 sense, yes, reasonable.

7 BY MR. BARTON:

8 Q. And you would also agree that those
9 reasonable policies had not yet been adopted or
10 implemented by that store? Do you agree with
11 that?

12 MR. BARNES: Object to form.

13 THE WITNESS: No. I can't say that
14 that's true. I don't know what the lag time
15 between the incident occurred here and when this
16 document was written to say when those policies
17 were put into effect. They could have been done
18 the next hour after we found out. There's no way
19 of knowing that from this document.

20 MR. BARTON: I don't think I have any
21 further questions.

22 EXAMINATION

23 BY MR. BARNES:

24 Q. I have a few follow-up questions. You
25 were asked a few questions about Exhibit 5,

1 Mr. Mollica. This is the Geauga County incident
2 back in 2011?

3 A. Yes.

4 Q. You weren't asked questions about the --
5 there was a thousand dollar monetary penalty. Do
6 you see that?

7 A. I see that, yes.

8 Q. And do you see the drugs up above,
9 hydrocodone with APAP?

10 A. Yes.

11 Q. What is that?

12 A. Those are combination products of --
13 APAP is a chemical abbreviation for Tylenol, what
14 you know as Tylenol, acetaminophen.

15 Q. And were these schedule III's or II's at
16 the time of this incident?

17 A. Every one of these would have been
18 Schedule III. Not every one. I'm sorry.
19 Carisoprodol I don't believe was a Schedule III.
20 I think that was a IV. And I honestly don't
21 remember what Suboxone was. That wasn't during my
22 time behind the pharmacy counter.

23 Q. Under the DEA scheduling regulations,
24 III's, IV's and V's are considered less dangerous
25 than II's; is that right?

1 A. Yes.

2 Q. The thousand dollar fine that was paid,
3 this store agreed to pay this thousand dollar fine
4 related to this incident; is that right?

5 A. Yes. That's it says, yes.

6 Q. Does theft happen from time to time
7 chain-wide? Given the fact that you employ
8 humans, do humans from the time steal?

9 A. Yes, they do. And the problem with
10 associates is they are more familiar with how to
11 get around the controls that you put in place.

12 So, yes, there are occasions when they will steal.

13 Q. There was a reference to this diversion.
14 This was by somebody who diverted to her addicted
15 husband and apparently he then sold the stolen
16 drugs to another individual.

17 Do you recall being asked about that?

18 A. I honestly don't recall the details of
19 that theft. I'm aware of the theft at Chardon,
20 and there was follow-ups, but the details -- I
21 just don't recall what the thief did with the
22 medication after she stole it.

23 Q. Right. And I'm not necessarily asking.
24 I'm just saying that you were asked some questions
25 a few minutes ago about what this says here at the

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1 top.

2 It says drugs were stolen by an inadequately
3 supervised technician who admitted to a Board
4 agent that the drugs were diverted to her addicted
5 husband and also sold to another individual.

6 I take it you have no idea what her addicted
7 husband did with these drugs?

8 A. No, no.

9 Q. In your experience, are pharmacists
10 supposed to follow people out of the store and all
11 the way home and monitor every pill that they take
12 and where they put it or who they sell it to on
13 the street corner or otherwise?

14 A. No. Our chain of custody is at the
15 counter.

16 Q. Are pharmacists responsible for the
17 criminal acts of third parties?

18 A. No.

19 Q. This was directed to one pharmacy
20 outside of Case Track One jurisdiction. How many
21 pharmacies were in the chain at the time?

22 A. Over 200. I want to say 212, but once
23 again, acquisitions happen in a fluid manner. So
24 I don't know the exact number at this particular
25 time, but I would venture to say over 200.

1 Q. And when an employee violates Giant
2 Eagle's rules like this, are they disciplined or
3 fired?

4 A. They're terminated immediately and where
5 it's appropriate, we report to the state Board.

6 Q. In any organization that you've ever
7 been in, do they have a 100 percent record of
8 employees not stealing?

9 A. Not the ones I've ever worked at, no.

10 Q. In your experience, are internal
11 controls sometimes overridden by dishonest
12 employees?

13 A. I've had situations where employees have
14 overridden internal controls, yes, to steal from
15 an organization, whether it's money, drugs, other
16 things, supplies.

17 Q. So despite the company's best efforts to
18 put in controls, sometimes people commit criminal
19 acts?

20 A. You're always trying to build a better
21 mousetrap because of those things.

22 Q. Now, other than this thousand dollar
23 fine paid in connection with this incident, are
24 you aware of the Ohio State Board of Pharmacy
25 doing anything else with respect to this incident

1 other than what's revealed in this document?

2 A. No, not to my -- not to my recollection.

3 I honestly can't remember if they did follow-up

4 inspections or things like that. They may have.

5 I just don't recall.

6 Q. And this was specifically directed at

7 one store, not the entire chain or the

8 corporation; is that correct?

9 A. That's correct.

10 Q. You said something about the DEA and the

11 Ohio State Board coming into these pharmacies for

12 spot audits, things of that nature.

13 A. Correct.

14 Q. Did the Ohio State Board of Pharmacy as

15 a result of this incident do anything with respect

16 to this store's ability to continue to fill

17 prescriptions?

18 A. No. Are you referring to any kind of

19 sanction?

20 Q. Yes.

21 A. No.

22 Q. You talked a lot about the integrated

23 system of controls that Giant Eagle had, and I

24 don't want repeat all of that. But I just want to

25 make sure for completeness of the record.

1 Did Giant Eagle at all times hire licensed
2 and trained pharmacists?

3 A. Yes.

4 Q. Did they train those pharmacists with
5 respect to diversion?

6 A. Pharmacists are trained, are aware of
7 the laws regarding diversion as part of licensure.
8 But then, yes, we had training for pharmacists and
9 reference material type of tools within the
10 pharmacy for them to reacquaint themselves with
11 those things at any time.

12 Q. If a pharmacist doesn't follow Giant
13 Eagle policies and procedures or the law, what
14 happens?

15 A. If a pharmacist doesn't follow the law,
16 they're terminated, many times reported to the
17 Board if we believe that whatever the termination
18 was a risk to public health.

19 Q. And you talked earlier today about the
20 professional discretion and judgment that
21 pharmacists use.

22 Is that a line of control in your mind in
23 terms of avoiding diversion? Is that the first
24 line of defense, that a pharmacist, licensed
25 pharmacist must review the prescription before

1 it's filled?

2 A. Yes. That's why pharmacies require
3 licensed pharmacists. That's one of the reasons.

4 Q. And pharmacies are assisted by
5 technicians in the pharmacy; is that right?

6 A. Yes.

7 Q. Are they trained and supervised by the
8 pharmacists themselves?

9 A. They're trained both by the pharmacist,
10 but there's a formal technician training program
11 as well, a Giant Eagle certification program.

12 Q. And the policies, some of the policies
13 that you referenced earlier today, do they include
14 the DEA pharmacist manual?

15 A. Yes.

16 Q. Are those in all of the pharmacies?

17 A. Yes.

18 Q. Do they include the Giant Eagle
19 Controlled Substance Dispensing Guidelines?

20 A. Yes.

21 Q. Are the pharmacists trained on those
22 dispensing guidelines?

23 A. Yes.

24 Q. Is that training monitored in some way?
25 In other words, can a pharmacist just skip that

1 training in some way?

2 A. I can't imagine you could pass the state
3 Board exam if you skip it.

4 Q. Does Giant Eagle make sure that the
5 pharmacists when they're hired, they actually
6 review these guidelines and are trained on them?

7 A. Yes. There's also computer-based
8 monitoring that had attestations.

9 Q. In these so-called PMPs, like the OARRS
10 system, are those in all of the Giant Eagle
11 stores?

12 A. To my knowledge, yes.

13 Q. And are pharmacists --

14 A. I can't recall what the State of West
15 Virginia was with that. I can't remember if they
16 had electronic or some other system, but whatever
17 West Virginia had, we were complying with that
18 one. I don't want to say it was exactly like
19 OARRS. Each state has a right to be a little
20 different there.

21 Q. Are those a resource tool for the
22 pharmacists to determine the legitimacy of
23 prescriptions?

24 A. Yes.

25 Q. You were asked a lot of questions today

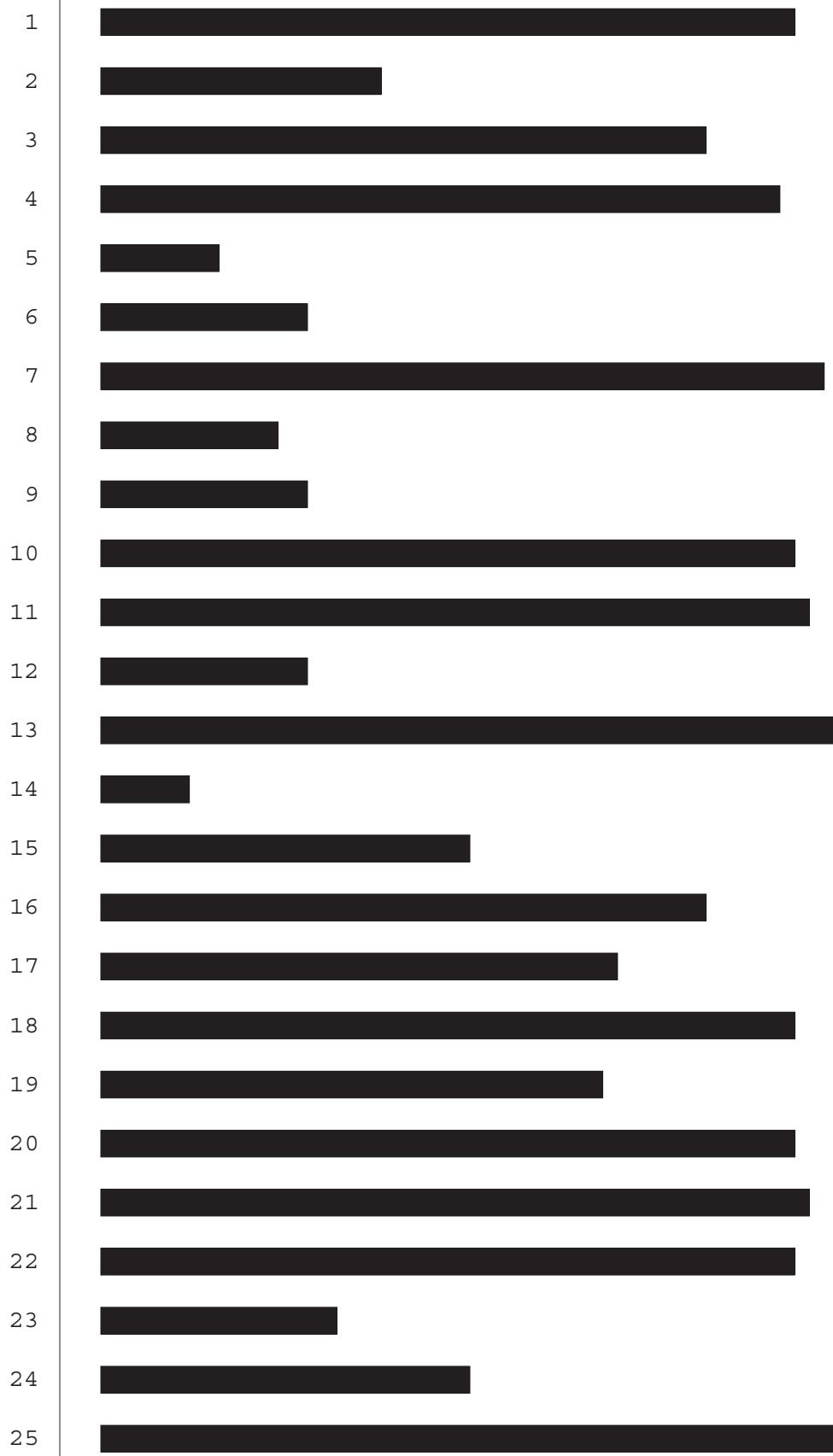
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1 audits from time to time?

2 A. Yes.

3 Q. The pharmacy district leaders, did they
4 oversee stores in their area and do quarterly
5 internal audits?

6 A. Yes.

7 Q. Including compliance audits?

8 A. Yes.

9 Q. Did they supervise the training of
10 pharmacists?

11 A. Yes.

12 Q. Did they work with law enforcement and
13 the Board of Pharmacy to deter diversion?

14 A. Yes.

15 Q. And criminal acts. Was there red flag
16 awareness training for the pharmacists?

17 A. Be more specific. I'm not sure...

18 Q. Well, in the dispensing guidelines, the
19 red flags to look for to see if a prescription is
20 legitimate.

21 A. Oh, yes, yes.

22 Q. Did Giant Eagle have a loss prevention
23 department?

24 A. Yes.

25 Q. With experienced diversion

220

1 investigators?

2 A. Yes.

3 Q. Did they spend a lot of time in the
4 pharmacies?

5 A. Yes.

6 Q. Do they work with the local police and
7 the Boards of Pharmacy and the DEA?

8 A. Yes.

9 Q. Did the pharmacists take any steps
10 individually to flag scripts that they thought
11 might be illegitimate?

12 A. Yes.

13 Q. Can you give us some examples?

14 A. If prescriptions didn't look like --
15 once again, you get intimate with your community,
16 so you recognize physicians' signatures when they
17 don't look right, if they're missing pieces of
18 documentation, when there's obvious errors.

19 You would be very surprised at some of the
20 whacky stuff that you see when the public tries to
21 divert, spelling things wrong, not using the right
22 Latin codes, missing numbers, unusual quantities
23 or frequency, dates that look altered, those types
24 of things, photocopies. There's all kinds of
25 things that you can pick up on.

1 Q. And are Giant Eagle pharmacists trained
2 to look for that kind of --

3 A. They're trained not just by the
4 organization, but just in their general practice,
5 too. You need to be in a pharmacy to know that
6 Dr. Smith always writes controls on a blue pad and
7 this one is yellow. You can't train that. But
8 pharmacists do those things as part of local
9 awareness as well as the tools that we provide
10 from the company.

11 Q. Are there security cameras in all of the
12 pharmacies?

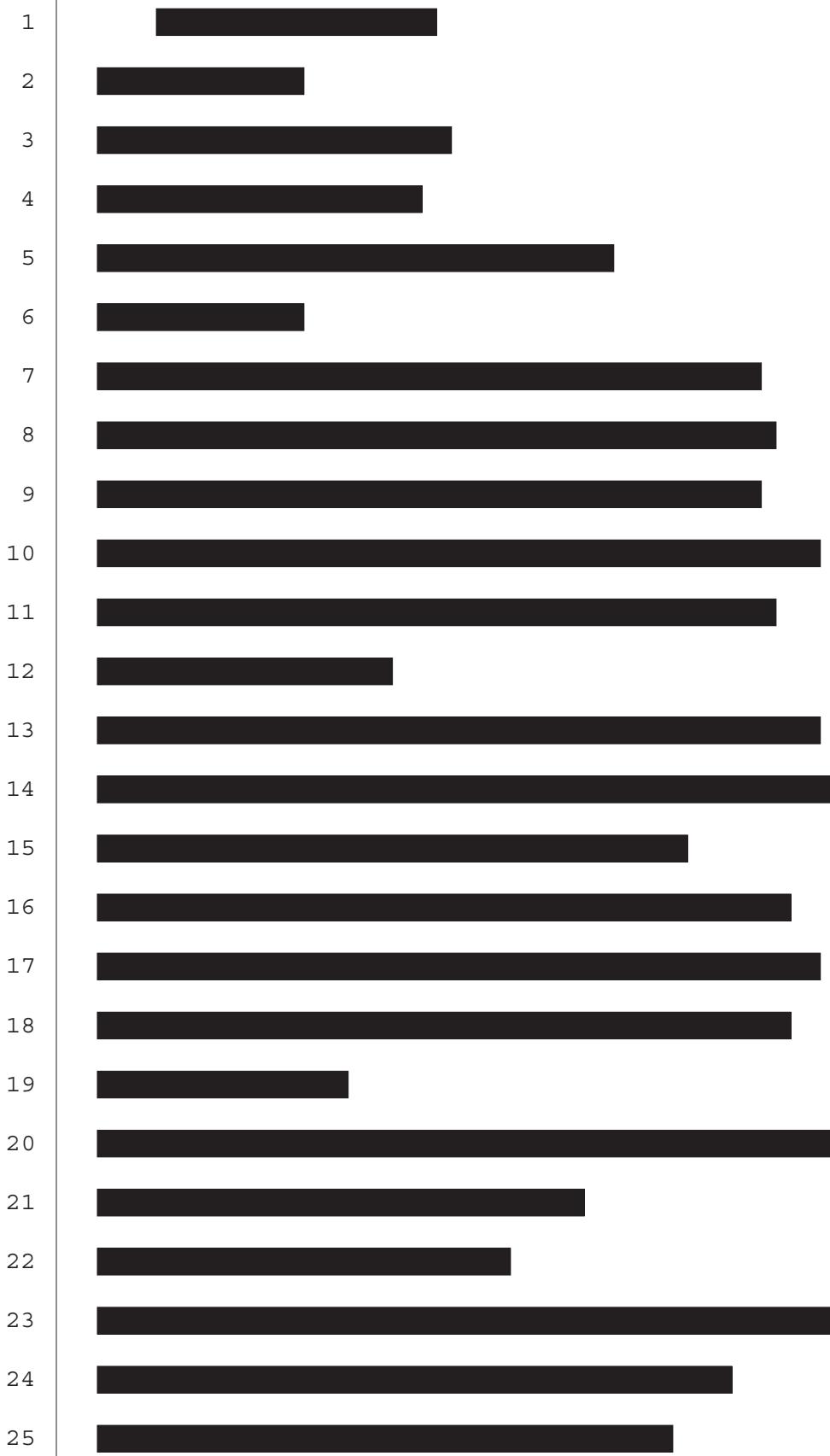
13 A. I actually don't know. Yes, there are
14 security cameras. Not for my entire run at Giant
15 Eagle, but when I left, I'm pretty sure every one
16 of them had security cameras.

17 Q. Are you aware of so-called BOLO notices,
18 Be On The Lookout notices exchanged between the
19 pharmacists?

20 A. Oh, they do that. Yeah. They do that a
21 lot on their own. It's a very tight network.

22 Q. You mentioned daily counts of drugs.
23 Did that include hydrocodone combination products
24 when HBC distributed it when it was a Schedule
25 III?

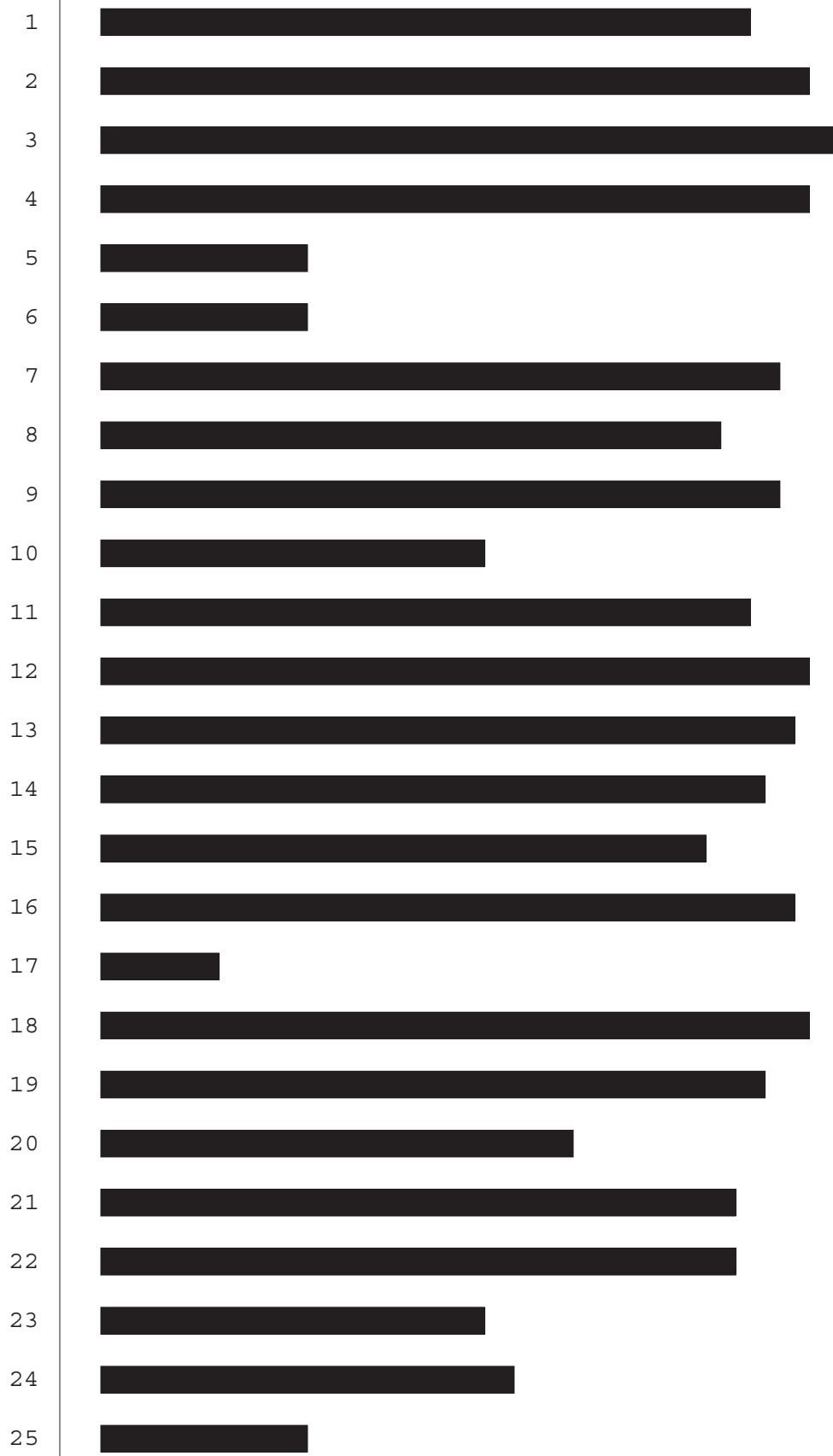
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- 24 [REDACTED]
- 25 [REDACTED]

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1 A. It was a small percentage. Like I say,
2 I can't recall the exact NDCs that were in the
3 warehouse, but even in our overall dispensing,
4 it's a small number, small percentage.

5 Q. This Exhibit 13, number (B) (4) talks
6 about location of the premises. Were all these
7 Giant Eagle pharmacies inside Giant Eagle grocery
8 stores?

9 A. Yes, with the exception of the examples
10 that I spoke to the gentleman about earlier.
11 There was two independently-owned grocery stores
12 in the Cleveland market that we had Giant Eagle
13 pharmacies in.

14 Q. Those were transitioned then to Giant
15 Eagle stores?

16 A. They were just -- no. They never
17 transitioned to Giant Eagle stores. We just took
18 the pharmacies out.

19 Q. But being inside of a grocery store, is
20 that a level of control that you consider as part
21 of the security analysis?

22 A. Not only were they delivered to a store,
23 but they were in cases where the pharmacy -- if
24 there was a situation where the pharmacy wasn't
25 open, they had to be delivered to a locked cage

1 within the store.

2 Q. Factor (B) (6) six talks about types of
3 vaults and safes and other secure enclosures.

4 Did the pharmacies at least to your knowledge
5 keep any controlled substances in locked secure
6 locations?

7 A. Every drug in the pharmacy is in a
8 locked location in the pharmacy, and that's the
9 reason why the state Boards have you send in
10 diagrams of physical barriers so every drug is
11 protected that way. It doesn't matter if it's
12 controlled or not. Narcotics inside of that
13 locked pharmacy are in a locked safe or locked
14 cabinet.

15 Q. Did the Ohio State Board of Pharmacy
16 audit every store at least once per year?

17 A. I don't know what their frequency was.
18 That sounds reasonable. If you would ask me how
19 often I think, I would say once a year.

20 Q. Did anybody from the Ohio State Board of
21 Pharmacy ever come to Giant Eagle to your
22 knowledge and say, hey, you're not meeting those
23 requirements?

24 A. No. In fact, we actually had a member
25 of the state Board who worked for us.

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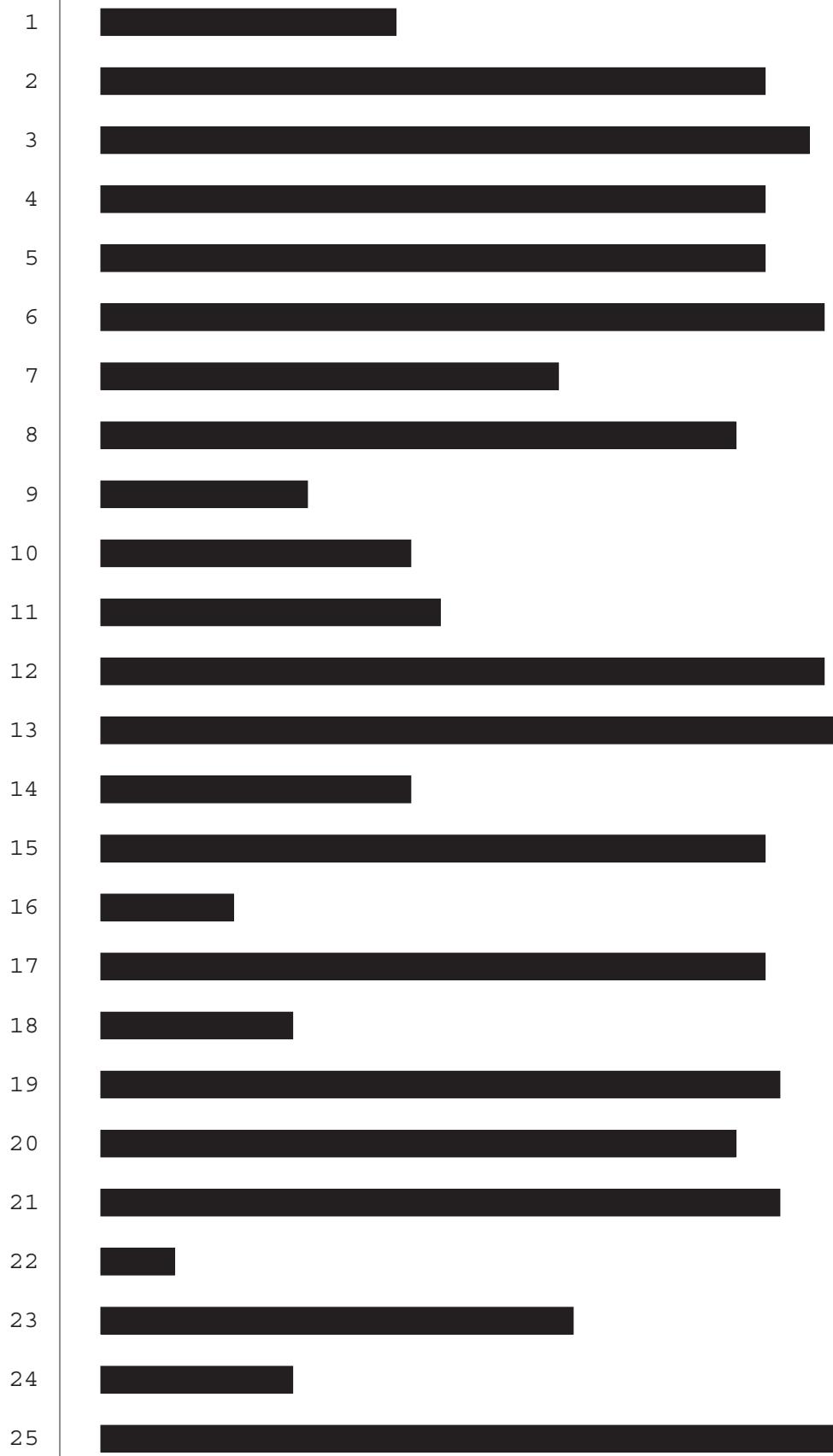
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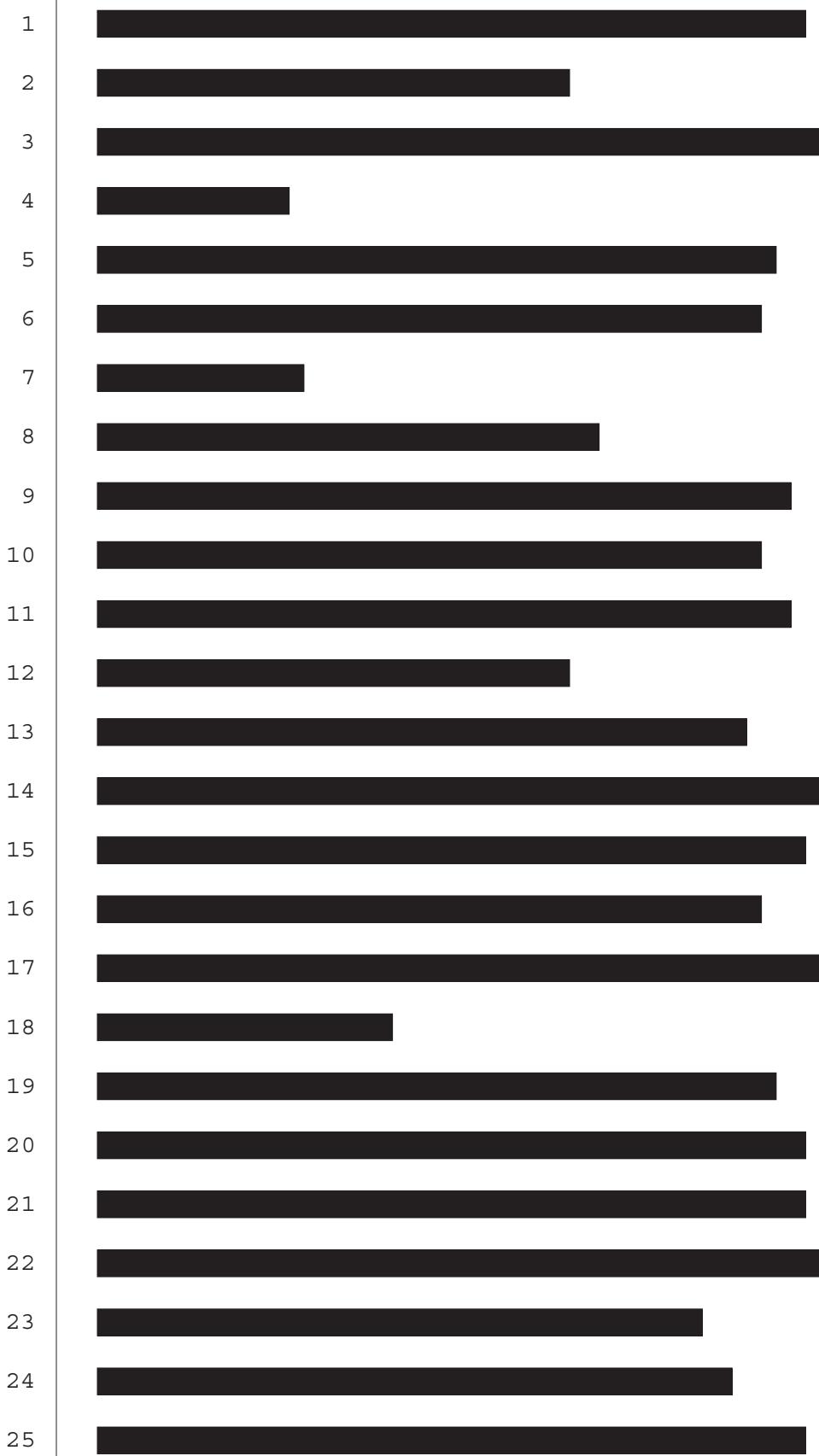
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1 by HBC?

2 A. I wouldn't know how many orders were
3 reported.

4 Q. How many times did HBC conduct due
5 diligence or investigations or follow-up on orders
6 that were above the threshold limits?

7 A. You asked me that a million times. I
8 don't know how often Joe or anyone from the
9 warehouse would have gone directly to the stores
10 to do that. It's just not a -- you're asking me
11 questions about how often day in/day out
12 operations happened. I just don't recall that
13 this far out.

14 Q. If we turn then from the HBC side that
15 we've been talking about and focus on the 200 or
16 so retail pharmacies, you talked about training
17 and policies that were in place.

18 Are there any records that you can point to
19 that would demonstrate that pharmacists, in fact,
20 refused to fill prescriptions?

21 A. No, no, no. I mean, I've stated that a
22 couple times. There's no requirement, no
23 regulatory or legal requirement to retain
24 documentation like that.

25 Q. Do we have any idea how many times that

1 training actually resulted in action that
2 prevented or stopped the diversion of opioids?

3 MR. KOBRIN: Were you interrupted there?

4 THE WITNESS: I was just going to say,
5 and actually my answer to this current question
6 would be the same as what I was going to say, the
7 reason why I can't point to those things is
8 because this is literally day in/day out every
9 single day at a pharmacy.

10 Every single day you're making those
11 judgements literally on every single prescription.
12 No, there's not a way to do that. That's what the
13 pharmacists are there for.

14 BY MR. HUDSON:

15 Q. You're making judgments every day;
16 right?

17 A. Yes.

18 Q. But do you have any sense of how many
19 times that resulted in a pharmacist actually --

20 A. I can tell you --

21 Q. Hold on. If I could just ask my
22 question this time. -- how many times that
23 resulted in a pharmacist actually refusing to fill
24 a prescription?

25 A. I couldn't tell you how often a

1 pharmacist refused to fill a prescription because
2 it's not a legal or regulatory requirement to
3 track that.

4 I can tell you from my personal experience
5 being behind a pharmacy counter, it could have
6 been daily that those things happened. It could
7 be three times in an hour. It could be one time
8 in a week.

9 Q. Is there any way though across the 200
10 Giant Eagle retail pharmacies to be able to
11 determine how many times that happened?

12 A. I don't know if there's a mechanism to
13 do that, but it's not a requirement to do that.

14 Q. Is there any reason why that couldn't
15 have been noted in the systems?

16 A. I don't know of any reason why we should
17 that I'm aware of in terms of a requirement.

18 Q. Any technical requirement or anything
19 that would have just prevented creating a log of
20 prescriptions that were refused to be filled so
21 that it could be populated over time in order to
22 improve the efforts to reduce diversion?

23 MR. KOBRIN: Object to form.

24 THE WITNESS: No. I don't know how or
25 why that would improve diversion tracking when you

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1 say no. And some of those things would be HIPAA
2 related. No, I don't know of any reason or
3 requirement to do anything like that.

4 BY MR. HUDSON:

5 Q. Well, you agree that logging
6 prescriptions that were not filled because there
7 was suspicion of diversion, keeping track of those
8 would allow a retail pharmacy to then have a list
9 that could then be referenced for the future if
10 there were other suspicions; right?

11 MR. KOBIN: Object to form.

12 THE WITNESS: We have a list and
13 documents that you can track to see if diversion
14 happened. It's the prescriptions we filled.

15 BY MR. HUDSON:

16 Q. You can tell from the prescriptions that
17 you filled how you avoided diversion?

18 A. If the prescriptions we filled are legal
19 and written by physicians, then by definition,
20 that's how you prevent diversion.

21 Q. How many did not get filled because you
22 avoided the diversion from occurring because you
23 blocked it as being suspicious?

24 MR. KOBIN: Object to form. Asked and
25 answered.

1 THE WITNESS: I don't know.

2 MR. KOBRIN: He talked about what was
3 done and the policies behind it and the reasons
4 behind it.

5 BY MR. HUDSON:

6 Q. And I just want to make sure the record
7 is clear. This is my only chance to talk to you.

8 There's no reason though why Giant Eagle
9 retail pharmacies nationwide couldn't have kept
10 some sort of record of suspicious or questionable
11 prescriptions that ended up not being filled, is
12 there?

13 MR. KOBRIN: Are you asking if they
14 should have kept a record of the actual
15 prescriptions themselves?

16 BY MR. HUDSON:

17 Q. Do you understand the question?

18 A. You're asking me is there anything that
19 prohibited us from maintaining records of
20 prescriptions we did not fill?

21 Q. Right. In other words, if somebody came
22 in and handed you a prescription and you as a
23 licensed pharmacist applying your medical judgment
24 said, you know what, this doesn't seem right, I'm
25 not going to fill this prescription, is there any

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1 reason why you can't write that down, take notes
2 on that, put it into a computer and then as an
3 organization log that to try to identify
4 suspicious or questionable opioid orders that are
5 being rejected?

6 MR. KOBRIN: Object to form.

7 THE WITNESS: For what reason? There's
8 no requirement to do that, so it would have never
9 come up.

10 MR. HUDSON: I don't have any further
11 questions.

12 RE-EXAMINATION

13 BY MR. BARNES:

14 Q. I just have one follow-up question. The
15 formula type program that went into effect in
16 2013, in your view, was that an additional system
17 of controls on top of controls that were already
18 in existence?

19 A. Yeah. We're always checking in orders
20 and maintaining inventory requirements. Like I
21 said, systems evolve in time, and that was an
22 example of one that evolved.

23 MR. BARNES: Thank you.

24 THE WITNESS: Thank you.

25 THE VIDEOGRAPHER: 2:01 p.m. we are off

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1 the video record. This concludes the video
2 deposition.

3 (Whereupon, at 2:01 p.m., the taking of
4 the instant deposition ceased.)

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1 COMMONWEALTH OF PENNSYLVANIA)
2 COUNTY OF ALLEGHENY) SS:
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C E R T I F I C A T E

I, Ann Medis, Registered Professional
Reporter, Certified Livenote Reporter and Notary
Public within and for the Commonwealth of
Pennsylvania, do hereby certify:

That ANTHONY MOLLICA, the witness whose
deposition is hereinbefore set forth, was duly
sworn by me and that such deposition is a true
record of the testimony given by such witness.

I further certify the inspection,
reading and signing of said deposition were not
waived by counsel for the respective parties and
by the witness.

I further certify that I am not related
to any of the parties to this action by blood or
marriage and that I am in no way interested in the
outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set
my hand this 8th day of January, 2019.

23 _____
Notary Public
24
25

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1 COMMONWEALTH OF PENNSYLVANIA) E R R A T A
2 COUNTY OF ALLEGHENY) S H E E T

3 I, ANTHONY MOLLICA, have read the foregoing
4 pages of my deposition given on January 4, 2019,
and wish to make the following, if any,
amendments, additions, deletions or corrections:

5

6 Page Line Change and reason for change:

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19 In all other respects, the transcript is true and
correct.

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21 _____
22 ANTHONY MOLLICA

23 _____ day of _____, 2019.

24 _____
25 Notary Public